TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1913

No. [redacted]54

FARSON, SON & COMPANY, PLAINTIFF IN ERROR,

vs.

JOE S. BIRD, AS COUNTY TREASURER OF SHELBY COUNTY, ALABAMA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

FILED OCTOBER 28, 1913.

(25,576)

(25,576)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 746.

FARSON, SON & COMPANY, PLAINTIFF IN ERROR,

vs.

JOE S. BIRD, AS COUNTY TREASURER OF SHELBY COUNTY, ALABAMA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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a FARSON, SON & COMPANY, Plaintiff in Error,
versus
JOE S. BIRD, as Treasurer, etc., Defendant in Error.

Writ of Error from Supreme Court of the United States to Supreme Court of Alabama.

1 At a regular term of the County Court of Shelby County at which officers authorized by law to hold or serve such court were serving, the following proceedings were had in the cause styled:

No. 1021.

FARSON, SON & COMPANY, Plaintiff,
v.
J. S. BIRD, as County Treasurer, Defendant.

Petition for Writ of Mandamus.

Section 1. Your petitioner, Farson, Son & Company, a Banking firm, composed of William Farson and John Farson, respectfully present this, their petition for a writ of mandamus to the Honorable County Court of Shelby County, Alabama, and its presiding Judge Hon. Edward S. Lyman and state that said Farson, Son & Company are the plaintiffs herein and that J. S. Bird, is the County Treasurer of Shelby County, Alabama, and is the defendant or respondent herein.

Section 2. Your petitioners further show: That they are the assignees and holders for value and owners of certain County Warrants, issued by said Shelby County, Alabama and its Court of County Commissioners to pay for the cost of constructing, building, erecting, furnishing and seating a new county Court-house building, one or both, during the years, to-wit: 1905 and 1907. That said warrants are principal warrants of $500.00 each, and interest warrants representing the principal and interest of the debt contracted by said county for the erection and furnishing of said building and the interest thereon: That said debt was created by contracts made by said County, as follows:

2&3 "A."

Contract made 25th day of July, 1905, with B. C. Bynum Construction Company, and approved by the Court of County Commissioners, September 11, 1905, to erect said Court-house for the contract price of...	$71,890.00
With interest thereon at 6½ per centum per annum, payable on the 1st day of February of each year, beginning February 1, 1914, and ending February 1, 1926, and said principal divided into installments falling due at the same time as the installments of interest on the 1st day of February of each year 1914 to 1926, inclusive.	

Said principal sum evidenced by County Warrants numbered from One to 142, inclusive of $500.00 each, with interest warrants annexed thereto, representing the interest accruing.

"B."

Contract made 21st day of February, 1907, and approved by the Court of County Commissioners of said County between said County and B. C. Bynum Construction Company for completing said new Court-house building for the contract price and sum of $32,000.00

With interest thereon at the rate of 6 per centum per annum, payable semi-annually on the 1st day of February and August of each year, beginning February 1, 1917, and ending February 1st, 1930, interest running from January 1, 1907 on the principal and interest of said debt evidenced by principal county warrants numbered 1 to 64, inclusive of $500.00 each and said principal warrants having annexed to them interest warrants representing the semi-annual interest accruing on said debt.

4 "C."

Contract made between said County and the Art Metal Construction Company and the Texas Seating Company for furniture and seating for said Court-house Building made on the 3rd day of September, 1907, and approved on that day by said Court of County Commissioners for the contract price and sum of... $10,500.00

With interest thereon at 6 per centum, payable semi-annually on the 1st days of February and August of each year, beginning February 1st, 1908, and ending February 1st, 1928, said principal warrants being numbered from 1 to 22, inclusive, all of the same being for $500.00 each, except warrants Nos. 11 and 12 which are for $250.00 each; said warrants having annexed to them interest warrants representing the interest accruing on said debt.

Total principal sum for erecting said building.. $114,390.00

Section 3. Your petitioners further show that the amounts, both principal and interest falling due and maturing February 1, 1916, on all of the above named contracts is as follows, to-wit:

Contract July 25, 1905, principal and interest.....	$7,210.00
Contract of February 21, 1907.....	1,920.00
Contract of September 3, 1907.....	875.00
Principal and interest due February 1, 1916.....	$9,005.00

Section 4. That your petitioners are now the owners of said warrants, principal and interest, falling due February 1st, 1916, of the following warrants, to-wit:

Contract of July 25, 1905:

Principal, — Warrant of $500.00	$.....
Interest, — Warrant of ——	$.....

Contract of February 21, 1907:

Principal, — War. of $500.00	$.....
Interest, 58 War. of $15.00	$ 870.

Contract of September 3, 1907:

Principal, 1 Warrant of $500.00	$ 500.00
Interest, 2 Warrants of 7.50	15.00
Interest, 9 Warrants of 15.00	195.00
Total	$1,565.00

5 That the form of said principal warrants and the said interest warrants — herein set out and shown by Exhibit "A" hereto annexed and made a part of this petition.

Section 5. That when said last named warrants fell due that all of the same were duly presented to said defendant, J. S. Bird, the County Treasurer of Shelby County, Alabama, for payment and demand was made upon him to pay said warrants and said J. S. Bird refused to pay said warrants or any of them; that said demand was also later remade in writing on the 9th day of February, 1916, and said Bird again refused to pay said warrants; that said demand and the refusal referred to are herein set out and shown in Exhibit "B" hereto annexed and made a part of this petition; that at the time all of said demands were made said J. S. Bird had in his hands as County Treasurer of said County the sum of about Twelve thousand (12,000.00) dollars, which he had derived from the levy of the special County tax of one-fourth of one per centum (¼ of 1%) authorized by section 215 of the Constitution and sections 138, 134, 139 of Vol. 1 of the Code of 1907 and paragraph 2 of section 3313 of Vol. 2 of the Code of 1907.

Section 6. That all of said Court-house warrants, both principal and interest issued to defray the costs of erecting and furnishing said new County Court-house building at Columbiana, the County seat of said County were duly registered in the records and books kept for that purpose in the office of the County Treasurer of Shelby County showing the date of maturity of both the principal and interest of said warrants; that all of said warrants were duly registered in the year- 1905 and 1907 in the separate register of claims presented against said special fund created by the levy of said special tax of one-fourth of one per centum (¼ of 1%) as required by sub-division 2 of Article 211 of Vol. 1 of the Code of 1907 and Sub-division 4 thereof; that there were at the time said claims were registered and there are now no warrants or claims registered in the office of said

County Treasurer or in any of said books any claims ahead of or prior to the principal and interest warrants issued to pay said Court-house debt,—against said County Court-house fund or said special tax fund raised for the special purpose of paying off said
6 Court-house debt, principal and interest as evidenced by said Court-house Warrants, principal and interest,—by the levy of said County Special tax of one-fourth of one per centum (¼ of 1%) and the warrants of your petitioner were registered at the same time and in like manner with all of said Court-house Warrants above referred to; that your petitioners' warrants were on the 1st day of February, 1916, and now are due and payable by said County Treasurer, J. S. Bird, out of said special tax fund.

Section 7. That it was expressly contracted between the parties agreed to and ordered by the Court of County Commissioners of said County in all of the foregoing contracts for the erection and furnishing of said Court House Building and it was expressly pledged therein that said County Tax of one fourth of one percentum (¼ of 1%) should be levied and was ordered levied annually in each of the year 1907 to 1930, both inclusive and from year to year thereafter for the purpose of raising funds to pay off said Court House debt, both principal and interest as evidenced by said warrants so registered against said fund in the books of the County Treasurer; and that said tax when collected should be exclusively applied to the payment of said warrants and interest coupon as pledged by said contract and the order of said Court as said warrants should severally fall due and mature; and it was agreed that said tax or so much thereof as might be necessary to pay off the interest and principal warrants falling due each year should be levied annually and set apart for the purpose of paying off said warrants; that said tax and the proceeds arising therefrom should be applied by the County Treasurer to the payment of said warrants falling due each year and to no other purpose unless the surplus of said tax, should be levied and otherwise appropriated; but your petitioners are not certain of this last allegation; but upon advice state all of said tax has been pledged and should be used to pay for said warrants and for no other purpose.

Section 8. That said Court of County Commissioners of 1905 and *in* 1907 deemed it necessary to make said contracts for the erection of said Court House Building; that under section 1403 of the Code of 1896 and section 131 of the Code of 1907 the Courts of County Commissioners, Board of Revenue, or the governing body
7 of each county in Alabama is authorized to make all such necessary contracts as said governing body deem expedient within the law for the purpose of erecting County Court House Buildings at the expense of the County and that all of said contracts are a matter of record in the proceedings of the Court of County Commissioners of said County; that said County has been in the habit of paying promptly through the office of its Treasurer and has paid all of said Court House Warrants, both principal and interest maturing since the year 1907 until now and has defaulted on the installment of interest and principal due *in* February 1, 1916, amounting to over $9,000.00.

Section 9. That in the years 1905 and 1907, the governing body of said County was the Court of County Commissioners; that the governing body of said County is now and has been since 1911 the Board of Revenue of said County, created under the local law found in the local acts of the Legislature of Alabama of 1911, page 154; that said Board of Revenue has conferred upon it all the power, authority and duty which was heretofore conferred upon the Court of County Commissioners of said County.

Section 10. That said Board of Revenue has since 1911 incurred a large debt of about $70,000.00 in excess of the Constitutional limit by making a road building debt of $252,000.00 bearing 6 per cent interest evidenced by County Warrants, which has also been registered since 1911 against said special fund of one-fourth of one per centum (¼ of 1%). That said excess debt was created when said road debt was contracted, per Exhibit "C" hereto annexed and made a part of this petition.

Section 11. That said Board of Revenue as now constituted has ignored or repudiated said road debt and declines to levy any tax to pay for the Court House debt; and has levied in the year
8 1915 all of said tax of one-fourth of one per centum (¼ of 1%) to pay for the expenses usual and ordinary and incidental to the construction and upkeep of the roads and bridges generally throughout the County, and for future debts anticipated at the time the levy was made which levy is shown in Exhibit "D" hereto annexed and made a part of this petition; that on account of the orders of the Board and the levy of said tax therein made and set out in Exhibit "D" said J. S. Bird, County Treasurer, has refused and still refuses to pay the warrants of your petitioner, or any of said Court House warrants registered as aforesaid and maturing February 1, 1916, but said Treasurer has paid on said County Road Warrants contracted for by A. T. Newell & Brothers since 1911 and registered since 1911 and held by said assignee of said warrants, the sum of $7,050.00 on January 20th, 1916; your petitioners fear that all of said $12,000.00 will be paid out by said Treasurer to other persons not entitled to the same unless the writ prayed for herein is granted) by suits or otherwise against said Treasurer, forcing him to do so, and against his will; that in the opinion, and according to the advice given, your petitioners,—said $7,050.00 was wrongfully paid out by said Treasurer.

Section 12. That said County Treasurer, Joe S. Bird, has violated his official duty and has failed and refused to perform the legal duty placed upon him by law in this:

1st. That said Bird, as Treasurer of Shelby County has failed and refused upon demand made to pay your petitioners all of said Court House Building Warrants, amounting to the sum of $1,565.00 (Fifteen hundred and sixty-five and no/100) dollars.

2. That said Bird as said Treasurer has withheld from your petitioners the money due out of the County treasury of said county on said principal and interest court house warrants amounting to $1,565.00.

3rd. That said Bird as said Treasurer has failed to apply the

money and proceeds derived *for* taxation (from the levy of said County tax of one-fourth of one per centum (¼ of one per centum) during the year 1915) to petitioner's warrants amounting to $1,565.00, due February 1st, 1916, after demand made upon him after February 1, 1916 to apply said money and pay said
9 proceeds over to your petitioner.

Section 13. That said warrants, principal and interest issued to pay for said Court House building are by the terms of said contracts under which the same are authorized or ordered to be issued, a first lien upon all of said tax and the proceeds derived from the levy of said tax of one fourth of one per centum (¼ of 1%) during said years 1907 to 1930, inclusive, or upon a sufficient amount of the proceeds of said tax collected each year as would pay off the interest and principal warrants maturing each year and that your petitioner's warrants enjoy the benefit of said lien.

Section 14. That your petitioners have no other legal remedy whereby they are able to compel said County Treasurer, Joe S. Bird, to perform the legal duty which he is bound by law to perform toyour petitioners that *a* sufficient or adequate except by writ of mandamus issued out of this Honorable Court to said Joe S. Bird directing and compelling him to perform his legal duty of paying your petitioner all of his said warrants in full, together with a reasonable attorney fee of ten per centum (10%) of the warrants held and herein sued on, out of said sum of $12,000.00 now in the hands of said County Treasurer,—therefore,

Prayer for the Writ.

Section 15. Your petitioner, therefore, being wholly without other adequate remedy for enforcing the payment of said warrants prays that this Honorable Court will issue an alternative writ of mandamus directed to said Joe S. Bird as County Treasurer of Shelby County, Alabama, commanding said Joe S. Bird as said Treasurer to pay over to your petitioner a sum of money sufficient to pay all of said warrants amounting to $1,565.00 and ten per centum (10%) thereon as attorney's fee and also six per cent. interest on the debt past due since February 1, 1916, as evidenced by said warrants out of the said $12,000.00 now in his hands as said Treasurer and which money was raised by the levy of the County special tax of one-fourth of one per centum (¼ of 1%) which was levied by the Board of
10 Revenue of said County in the year 1915 and which tax is authorized by Section- 138 and 134 of Vol. 1 of the Code of 1907 as required by law, or to show cause on or before the 23rd day of March, 1916, in this Court why he should not be required to do so. Your petitioner also prays that a peremptory writ of mandamus issue according to law commanding said Joe S. Bird as Treasurer of said County to pay all of said warrants, principal and interest, attorney's fee and costs to the end that your petitioner may have no further legal ground of complaint against him.

FARSON, SON & COMPANY,
By G. W. L. SMITH.
G. W. L. SMITH,
Attorney, of Brewton, Alabama, Att'y for Petitioners.

STATE OF ALABAMA,
County of Shelby,
City of Brewton:

Before me, J. R. White, Clerk of the County Court of Shelby County, with a seal of office in and for said State and County, this day personally appeared G. W. L. Smith, Attorney, who is known to me, and who being by me first duly sworn, deposes and says that all of the foregoing allegations set out and shown in the foregoing petition are true and correct, according to affiant's best information and belief.

G. W. L. SMITH, *Affiant.*

Sworn and subscribed to before me the 3rd day of March, 1916.
J. R. WHITE, *Clerk.*

NOTE.—Will serve a copy of petition on Mr. Bird today.
G. W. L. SMITH.

11 EXHIBIT "A."

(Copy of the Warrants.)

UNITED STATES OF AMERICA,
State of Alabama:

No. 9. $500.00.

Installment No. 9.

County of Shelby.

Court-house Warrant and Certificate.

This is to certify, That the County of Shelby, in the State of Alabama, is justly indebted and has promised to pay to Art Metal Construction Company the sum of five hundred dollars, $500.00, due and payable on the first day of February, 1916, and the Treasurer of said County has been duly and is hereby authorized ordered and directed to pay said Art Metal Construction Company, its assigns or bearer the sum of Five Hundred Dollars ($500.00) in full settlement of the amount hereby evidenced, out of the Special County Court House Fund levied and created and to be hereafter levied and created for that purpose, upon the presentation and surrender of this Warrant and Certificate of Indebtedness and maturing coupons at his office in the City of Columbiana, in the State of Alabama, or at the office of Farson, Son & Company, in the City and State of New York, at the option of the holder hereof. It is further certified that this portion of the contract price and the said sum of money hereby representing is allowed thereon, and shown upon the face of this warrant, bears interest by virtue of a valid subsisting contract below referred to, as well as this warrant, at the lawful rate of

six per centum (6%) per annum, payable semi-annually hereafter on the first days of February and August of each year, and as evidenced by and upon the presentation and surrender of the interest coupons hereto annexed, and until the principal hereof shall have been fully paid.

12 This warrant has been issued by said County in part payment of the cost of labor and material furnished, furniture and fixtures to complete the new County Court House Building for said County erected within the corporate limits of the City of Columbiana, Alabama, the County seat in and for said County and State, which labor has been actually done, said material actually furnished and advanced to said County to the extent and amount of this warrant and of the series of warrants of which this is one, for said purpose; the validity and legality of the indebtedness represented by this and the other warrants of said series has been by the Court of County Commissioners of said County carefully investigated and found to be just, and it has been duly ascertained and determined that the County has received the benefit thereof, and the claim for said indebtedness has been duly audited and allowed by the Court of County Commissioners of said County. This warrant is one of a series of 22 warrants numbered 1 to 22, both inclusive, of like date, tenor and amount, excepting numbers 11 and 12 which are each for $250.00 both of which are payable February 1, 1918; all of which 22 warrants are respectively payable out of the twenty-one installments into which the entire contract providing furniture and fixtures for said Court House is divided, and which warrants have been made payable in each year to correspond with the different years wherein said installments are payable, one of said installments being payable on the first day of February in each of the years 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927 and 1928 all of which warrants have been duly issued.

It is hereby certified and recited, that all conditions and things required by the Constitution and laws of the State of Alabama to be done precedent to and in the issuance of this warrant and said series of warrants, have been properly and regularly done, happened and performed, in regular and due form and time as required by law; that this and the other warrants and the interest coupons thereto annexed aforesaid are issued in compliance with the terms of the contract entered into between said County and Art Metal Construction Company, and pursuant to valid orders of the Court of

13 County Commissioners of said County; that this warrant and the coupons hereto annexed are issued for, and are conclusive proof of the due fulfillment of the proportionate part of the contract aforesaid represented by the amount of this warrant, and which has become justly payable as herein provided; and that sufficient and proper provision by the levy of one-fourth of one per centum special tax annually, a sufficient part of which when collected it is covenanted and agreed shall be exclusively applied to the payment of this warrant and the interest coupons hereto annexed, as pledged by said contract and the orders of the Court of

County Commissioners of said County, as they severally fall due, has been and until full payment of the principal and interest hereof, will continue to be duly and promptly made sufficient to pay the amount evidenced by this warrant when and as the same matures.

In witness whereof, the County of Shelby, in the State of Alabama, through the Court of County Commissioners has ordered and caused this warrant to be signed by the Judge of Probate of said County, and his official seal to be hereto affixed and countersigned by the Probate Clerk, and the interest coupons annexed to be signed as the lithographed fac-simile signature of said Judge of Probate as of the first day of June, A. D., 1907.

[Seal Probate Court, Shelby Co., Ala.]

COUNTY OF SHELBY,
By A. P. LONGSHORE,
Judge of Probate, Shelby County, Alabama.

Countersigned:
J. S. BIRD, *Probate Clerk.*

11 *Certificate of Identification.*

I, A. P. Longshore, Judge of Probate and Trustee, do hereby certify that the within warrant is one of the warrants held in trust by me for delivery upon the allowance of the debt represented by it, and upon the order of the Court of County Commissioners of Shelby County, Alabama, and that I have duly and regularly delivered the same to Art Metal Construction Company, in strict conformity with all legal requirements, including my agreement of trust, together with the annexed interest coupons.

A. P. LONGSHORE,
Judge of Probate and Trustee.

Registration.

Office of County Treasurer, Columbiana, Alabama.

STATE OF ALABAMA,
Shelby County, ss:

Warrant No. 9.

Installment No. 9.

This warrant for the sum of $500, and the annexed semi-annual interest coupons presented for registration and registered as and against the special county Court House fund for Shelby County, Alabama, and allowed to Art Metal Construction Company on account of its contract for providing the necessary labor and material furnished, and the furniture and fixtures to complete the Court House of Shelby County, pursuant to an order of allowance duly

made by the Court of County Commissioners of said County of Shelby, Alabama.

Witness my lithographed fac-simile signature to the annexed interest coupons and my hand to this warrant, this the first day of October, 1907.

W. E. HARRISON,
County Treasurer.

15 *Assignment.*

This is to certify, that the undersigned has received the within principal County Court House warrant and the interest coupons annexed thereto from Shelby County, Alabama, and its Judge of Probate, as above written and for value received, hereby assigns, subrogates and delivers to ——— ———, or bearer, all right, title and interest it has in and to the same, and said contract debt due it, with the interest thereon, by said County, which is represented by the amounts called for by this principal warrant and the annexed coupons, and said assignee, or bearer, is hereby subrogated to all claims, liens, rights or title, whether in law or equity, which are or may be secured to it in said contract, and hereby authorizes the said assignee, or bearer hereof, to collect the same and give full receipt and acquittance therefor in the name of the undersigned.

Witness the lithographed fac-simile signature of the general agent of Art Metal Construction Company assigning the annexed interest coupon warrants, and the hand of said general agents assigning this principal warrant.

ART METAL CONSTRUCTION
COMPANY, *Contractor.*
By W. B. BROWN, *Its General Agent.*

On the First Day of February, 1916.

The County of Shelby.

Coupon No. 18.
Installment No. 9. $15.00.

In the State of Alabama, will be due, and the Treasurer of said County is hereby directed and ordered to pay Art Metal Construction Company, its assigns or bearer, $15.00 out of the Special Court House Funds, at the office of County Treasurer, at Columbiana, in said State and County, or at the office of Farson, Son and Company in the City and State of New York, at the option of the holder hereof, being interest due said contractor on the sum of money and portion of the contract price represented by Court House warrant No. 9.

A. P. LONGSHORE,
Judge of Probate, Shelby County, Ala.

16 Registered against the Special Court House Fund of Shelby County, Alabama and allowed to Art Metal Construction Company.

W. E. HARRISON,
County Treasurer.

This interest sold and this debt and coupon warrant representing it, is assigned, for value received, to —— ——, or bearer.

ART METAL CONSTRUCTION CO.,
Contractor.
By W. B. BROWN, *Its General Agent.*

On the First Day of February, 1916.

The County of Shelby.

Coupon No. 18.
Installment No. 17. $15.00.

In the State of Alabama, will be due, and the Treasurer of said County is hereby directed and ordered to pay Texas Seating Company, its assigns or bearer $15.00 out of the Special Court House Funds, at the office of County Treasurer, at Columbiana, in said State and County, or at the office of Farson, Son & Company, in the City and State of New York, at the option of the holder hereof, being interest due said contractor on the sum of money and portion of the contract price represented by Court House Warrant No. 18.

A. P. LONGSHORE,
Judge of Probate, Shelby Co., Ala.

Registered against the Special Court House Fund of Shelby County, Alabama, and allowed to Texas Seating Company.

W. E. HARRISON.

This interest sold and this debt and coupon warrant representing it is assigned, for value received, to —— ——, or bearer.

TEXAS SEATING COMPANY.
By W. B. BROWNE, *Its General Agt.*

17 On the First Day of February, 1916.

Shelby County.

Coupon No. 19.
Installment No. 8. $15.00.

In the State of Alabama, will be due, and the Treasurer of said County is hereby directed and ordered to pay B. C. Bynum Construction Company, their assigns or bearer, $15.00 out of the Special Court House Funds, at the office of County Treasurer, at

Columbiana, in said State and County, or at the office of Farson, Son & Company, in the City and State of New York, at the option of the holder hereof, being six months' interest due said contractors on the sum of money and portion of the contract price represented by Supplementary Court House Warrant No. 34.

A. P. LONGSHORE,
Judge of Probate, Shelby County, Ala.

Registered against the Special Court House Fund of Shelby County, Alabama and allowed to B. C. Bynum Construction Company for extra work.

W. E. HARRISON,
County Treasurer.

This interest sold and this debt and coupon warrant representing it, *it* assigned for value received, to ——— ———, or bearer.

B. C. BYNUM CONST. CO.,
By B. C. BYNUM,
Contractors.

Note.

That subject to the numbers and variations as to numbers, the 58 warrants issued to the B. C. Bynum Construction Company are of the form hereinabove set out and shown.

That subject to the variations as to numbers, the 3 warrants issued to the Art Metal Construction Company are of the form as hereinabove set out and shown.

That subject to the variations as to numbers, the 11 warrants issued to the Texas Seating Company are of the form as hereinabove set out and shown.

18 EXHIBIT "B."

(*Written Demand on County Treasurer and His Written Refusal to Pay Warrants.*)

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALABAMA, February 9, 1916.

To Honorable Joe S. Bird, Treasurer of Shelby County, Alabama:

DEAR SIR: We have presented and caused to be presented to you the county warrants which bear interest which mature February 1, 1916, and issued by said County to pay for the construction and furnishing of the new County court house building at Columbiana, Alabama; one batch of warrants held by Farson, Son & Company, amounting to the sum of Two Thousand Six Hundred and fifty-five (2,655.00) dollars and another batch amounting to the sum of Seven Thousand two hundred and ten and 35-100 (17,210.35)

Dollars, held by McCoy and Company of Chicago. You have declined and refused to pay all of these warrants on the ground that the Board of Revenue of said County have levied the special tax of one fourth of one per centum heretofore pledged by contract for the payment of said warrants, for County road and bridge purposes instead of for the payment of said Court House debt and on this account you have no funds in the County Treasury available for the payment of said warrants; you also inform us that you have now on hand in the County Treasury the sum of about Twelve Thousand ($12,000.00) Dollars, which was collected from the levy of the County's special tax in 1915 of one-fourth of one per centum for county road and bridge purposes; we claim that said money belongs to us, that you have no right to pay it to any one except to the holders of the Court house warrants; we forbid you from paying it to any other account, except upon the court house warrants duly registered in the books of your office against said tax fund; that said warrants are a prior claim on said taxes and funds, and payments otherwise is a diversion for which you are liable under the laws. Please pay all of said claims out of said money and oblige.

19 Yours very truly,

FARSON, SON & COMPANY.

By Their Attorney, G. W. L. SMITH.

February 9, 1916.

For reasons above stated, I cannot pay out said money for said warrants.

J. S. BIRD.
County Treasurer.

EXHIBIT "C."

(*Audit of the County Debt.*)

Minutes.

Book 2, Board of Revenue of Shelby County, Alabama.

Alabama Audit Co.

Page 115.

MONTGOMERY, ALABAMA, July 12, 1915.

To the Honorable Board of Revenue, Shelby County, Alabama.

GENTLEMEN: As per your valued instructions, we undertook to ascertain the financial position of Shelby County as of June 1, 1915. The attached schedule show- in detail the several transactions covering the Court House construction and Special Road and Bridge Construction and a general summary of the whole.

We ascertained that the totai net indebtedness of the County is $363,546.57. According to the best information available to us,

we estimate the total assessable values of the County to be $8,400,000.00. At three and a half per cent of this valuation, the constitutional limit of indebtedness is $294,000.00; the indebtedness of your County is in excess of such limitation in the sum of approximately $70,000.00.

Thanking you for the engagement and trusting that you may find our report satisfactory, we are,

Respectfully,

[Seal Alabama Audit Co., Montgomery, Ala.]

ALABAMA AUDIT COMPANY,
By C. G. TROST, *Pres.*

C. G. T./A. R. G.

20 STATE OF ALABAMA,
Shelby County:

I, Oliver Miles, Clerk of the Board of Revenue of Shelby County, Alabama, do hereby certify that the foregoing words and figures are a true and correct copy of the Minutes of the Board of Revenue of Shelby County, Alabama, as the same appears in Book 2 on page 115.

Witness whereof I have hereunto set my hand on this the 9th day of February, 1916.

OLIVER MILES,
Clerk of the Board of Revenue of Shelby County, Alabama.

EXHIBIT "D."

(*Tax Levy in* 1915 *of One-fourth of One per Centum Made by Board of Revenue.*)

Minutes.

Book No. 2.

Shelby County Board of Revenue.

Page 59.

June 7, 1915.

The Board of Revenue of Shelby County, Alabama, met in regular session on this the 7th day of June, 1915, it being the first Monday in June, 1915, the same being the day and time fixed by law for the meeting or session of said Board, and the following members were present: P. J. Kroell, and the following members, to-wit: J. E. Ruffin, J. M. Baldwin, R. E. Collins and W. G. Nichols, and the following proceedings were had and orders made, to-wit:

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(Endorsed on margin:) Wooden bridge on Waxie. County Convicts working on public roads.

Whereas, said County of Shelby is indebted to sundry, diver-
and various persons in varying and sundry sums for work and labor
done on and for material furnished in and about repairing or
21 maintaining the public bridges and in and about maintain-
ing the public roads buildings and bridges of said county;
and,

Whereas, said Board of Revenue is contemplating the working of the County Convicts of said County on the various and divers public roads of said County during said year, (and are now so working them) in and about and for the maintenance thereof, and the erection of new public roads in said county, and which action will entail a large expense and require considerable funds therefor, and

Whereas, it is made known to and to appear to, and is known to, said Board of Revenue, that the public bridges and roads of said County are in bad repair, and in many instances almost impassable; and,

Whereas, said Board of Revenue of Shelby County is contemplating the rebuilding and repairing of the following bridges and the building of the following bridges, as hereinafter specified to-wit:

Page 90.

(1) The rebuilding of the wooden bridge over Waxauhatchie on public road leading from Shelby to Shelby Springs.

(2) Repairing the wooden bridge across Camo Branch on public road leading from Shelby to Shelby Springs.

(3) Repairing wooden bridge across Shoal Creek on Ashville road leading from Montevallo to Moore's Cross road;

(4) Rebuilding the wooden bridge across Bear Creek on Sterrerr and Montevallo road.

(5) Rebuilding wooden bridge across Bear Creek on Vandiver and Sterrett Public road.

(6) Rebuilding Club House Bridge, or bridge across Kelly's Creek on road leading from Calcis to St. Clair County.

(7) Building new bridge across Four Mile Creek above Wilsonville on Vincent and Montevallo Highway.

(8) Repairing or rebuilding wooden bridge over Beeswax Creek near residence of George Beard on Montgomery road between Wilsonville and Shelby.

(9) Repainting and repairing the steel bridge over Yellow Leaf Creek on Vincent and Montevallo Highway, between Harpersville and Wilsonville.

22 (10) Repairing or rebuilding wooden bridge over Beeswax Creek and Morris Ferry road.

(11) Wood bridge over Yellow Leaf Creek on Pumpkin Swamp

Creek, known as Hubbard Bridge, to be rebuilt between Columbiana and John Hartsfield mill.

(12) Repairing Teague Bridge, a wooden bridge, over Yellow Leaf Creek, on Possum Trot road between Columbiana and Weldon;

(13) Repairing wooden bridge over Four mile, or Possum Trot Creek, at or near Blue Springs Church.

(14) Rebuilding wooden bridge at Chapel Church on Vincent and Montevallo Highway.

Page 91.

(15) Rebuilding or repairing five small wooden bridges on Spring Creek road from E. L. Crumpton's to Spring Creek Church.

(16) Repairing steel bridge across Cahaba River on Public road known as Tuscaloosa Road.

(17) Painting and repairing steel bridge across Buck Creek at Helena, Alabama.

(18) Building or repairing, or putting steel span across Roy Branch on Helena and Acton road.

(19) Building new steel bridge across Buxahatchie Creek below Calera on State Highway;

(20) Building new steel bridge across Honeycutt Creek below Calera on State Highway, and

Whereas, there are various and sundry other public bridges across the public roads of Shelby County out of repair, not hereinbefore specifically mentioned, and various and sundry public roads out of repair, and all of which said Board of Revenue is contemplating repairing, rebuilding and maintaining during said year; and,

Whereas, the general levy of one half of one per centum hereinbefore provided for will not raise more than sufficient funds to meet the other current expenses of the said County of Shelby for the current year; and

Whereas, the said County of Shelby has no other funds out of which to pay said debts created, as aforesaid, and said debts or repairs and costs of repairs, etc., as hereinbefore recited, and as contemplated by said Board, as aforesaid, and for the repairing and maintenance of said bridges and roads, and for the payment of said indebtedness; and,

Page 92.

Whereas, said Board of Revenue of Shelby County deems it necessary to levy and collect the hereinafter special tax for the purposes hereinbefore set out.

Now, therefore, it is hereby ordered, adjudged and decreed by said Board of Revenue of Shelby County, Alabama, on this the 20th day of June, 1915, the same being the June term, 1915, of said Board, which said term began on the first Monday in June, 1915, the same being the 7th day of June, 1915, that there be and hereby is levied by said Board of Revenue for the current year 1915, a special tax of one-fourth of one per centum on the value of all taxable property of said County, upon the assessment last made for the State taxes.

which said levy is made for the purpose of paying the debts hereinabove described and set forth; that have been created as aforesaid, and said debts and indebtedness as contemplated by said Board, as aforesaid.

STATE OF ALABAMA,
Shelby County:

I, Oliver Miles, Clerk of the Board of Revenue of Shelby County, Alabama, do hereby certify that the foregoing words and figures are a true and correct copy of the Minutes of the Board of Revenue of Shelby County, Alabama, as the same appears in Book No. 2, on page 59 and then on page- 89 to 92, inclusive.

Witness whereof, I have hereunto set my hand on this the 9th day of February, 1916.

OLIVER MILES,
Clerk of the Board of Revenue of Shelby County, Alabama.

24 EXHIBITS "E," "F," AND "G."

(*Composing the Original Papers or the Certified Copies of the Record or Minutes of Commissioners' Court for Shelby County, Alabama, 1905 to 1907, Inclusive, Showing Court-house Contract with B. C. Bynum Construction Company, Made and Adopted September 11, 1905, the Resolution of First Monday, October, 1905, Confirming said Contract.*)

The orders of Court allowing Court House contractor's claims from 1 to 9, both inclusive; the contract of February 21, 1907, for completing the Court House and allowance of $32,000.00 of warrants by order of Court; contract and orders of Court of September 3, 1907 allowing $10,500.00 for furnishing Court House; the demand and refusal made on Treasurer Bird February 9, 1916; the demand and refusal made on Board of Revenue February 9, 1916; Tax levy made by Board of Revenue in 1915. Auditor's report dated July 12, 1915; Tax Assessor's certificate made February 9, 1916.

Minutes of Commissioners' Court, Term 1905.

Book No. 1, Shelby County.

Page 525.

Court of County Commissioners.

STATE OF ALABAMA,
Shelby County:

Regular adjourned July Term, September 11, 1905.

At this regular adjourned July Term and meeting of the Court of County Commissioners of Shelby County, in the State of Alabama,

held at its regular meeting place at the Court House in the Town of Columbiana on the 11th day of September, 1905, at which regular meeting a quorum was present, consisting of the following members, to-wit: A. P. Longshore, Judge of Probate, John E. Dykes, Pleasant Shaw, R. J. Griffin, and R. B. Posey, Commissioners, the following resolution was introduced and upon vote taken, the same unanimously adopted, passed and approved, and ordered spread down in full upon the minutes of this Court; said following resolution embodies the contract with the B. C. Bynum Construction Company under and by virtue of which County of Shelby undertakes to pay for the erection of a Court House within the corporate limits of the town of Columbiana, and said resolution ratifies and approves said contract; the terms of which have been heretofore agreed upon between the County and said B. C. Bynum Construction Company, and which resolution also authorizes the issue and execution of proper Court House warrants to be delivered to the contractor in payment of the contract price due for the Court House, and also fixes the forms of said warrants, their amounts and maturities, and the forms of the contractor's application, the Architect's certificate, the Court's order of allowance, and said resolution is in words and figures as follows:

Page 526.

Resolution.

A resolution to provide for the erection of a court house for the County of Shelby within the corporate limits of the town of Columbiana, Alabama, to make a contract therefor, and to provide for the payment of the price thereof, and to issue County Court House warrants and certificates of debt for the contract price:

Sec. 1. Whereas, it is now necessary that the Court of County Commissioners of the County of Shelby should provide a county court house containing the necessary offices for the County officials and rooms for conducting Court business: Therefore, be it resolved by the Court of County Commissioners constituting the Commissioners' Court for the County of Shelby, that the plans, specifications and addenda prepared by Bruce Architectu-al Company of Birmingham, Alabama, for the Court House, as identified this day by the signature of A. P. Longshore, the principal judge of the Court of County Commissioners of Shelby County, in the State of Alabama, be and the same are hereby approved and adopted.

Sec. 2. Be it further resolved by the Court of County Commissioners of Shelby County, in the state of Alabama, that the bid and proposal of B. C. Bynum Construction Company, contractors of Montgomery, Alabama, for the erection and construction of the Court House for said County, within the corporate limits of the town of Columbiana, in said County, in accordance with the plans, specifications and addenda prepared and approved by said Bruce Architectu-al Company, Architects of Birmingham, Alabama, be and the same are hereby adopted, and the price agreed upon and fixed at

the sum of Seventy one thousand, eight hundred and ninety
26 ($71,890.00) Dollars subject to such additions and deductions as may be provided for hereafter by the terms of the Contract made in pursuance hereof; and said plans and specifications and addenda are this day filed in the office of the Probate Judge of said County, and are identified in duplicate by the signature of the Principal Judge of the Court of County Commissioners for Shelby County, Alabama, and B. C. Bynum Construction Company.

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Contractors, and are hereby approved and adopted.

Sec. 3. Be it further resolved that the Court House to be erected on the lot or square of ground situated within the corporate limits of Columbiana, Alabama, which square has been designated by the Court, and at a place thereon assigned by the Architect, to-wit: Corner of Main and Depot Streets.

Sec. 4. Be it further resolved, that the President of the Court of County Commissioners and the County Commissioners, shall make all their acts in accordance with this contract conform precisely with the laws of the State of Alabama, and in the event of litigation or any question arising as to their having done so, or as to their powers for the prosecution of the work, or of matters respecting the making of the contract or the collection of any part of the debt under the contract—the County shall pay all costs necessary to defend said suit, and all costs that may arise out of the same, and the contractors or their assigns shall be held harmless.

Sec. 5. Be it further resolved, by the Court of County Commissioners of Shelby County, constituting the Commissioners' Court, that there shall be levied a special tax of sufficient rate and amount on all the taxable property of Shelby County, not exceeding the rate allowed by law, or (¼) one-fourth of one percentum annually with which to pay said warrants or certificates as they become due, and said court house debt principal and interest, as provided in the contract with B. C. Bynum Construction Company for the construction of said court house, and which said tax levy and the resolutions ordering the same shall constitute a continuing contract between said County and said B. C. Bynum Construction Company, and their assigns, and shall not be in any way limited or repealed, so
long as any of said Court House warrants or certificates of
27 indebtedness and the interest thereon shall remain outstanding and unpaid. And it is hereby covenanted and agreed that said County waives all defense of every kind and nature to the payment of said warrants, and interest coupons, and declares the same to be in every way, valid and binding obligations upon the County of Shelby.

Sec. 6. Be it further resolved by the Court of County Commissioners of Shelby County, that the contract between said County

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and said B. C. Bynum Construction Company for the erection of a Court House for said County hereinbelow set out, be and the same is hereby made, approved and accepted by said County and the presiding officers of said Court or Probate Judge is hereby authorized, empowered and directed to sign and execute the said contract for and in behalf of said County, which is as follows:

Alabama Court-house Contract.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALABAMA, —— —, ——.

This agreement made the 25th day of July, 1905 by and between B. C. Bynum Construction Company of Montgomery, Alabama, party of the first part (hereinafter designated the Contractors) and the Board of County Commissioners of Shelby County, Alabama, acting for Shelby County, Alabama, party of the second part—Witnesseth, that the contract-s, in consideration of the agreement herein made by the County through the Board of County Commissioners of Shelby County, agrees with the said County and the Board of County Commissioners of said County as follows:

Articles I.

The Contractor under the direction of the Bruce Architectu-al Company, Superintendent appointed by the Board of County Commissioners of said County, in accordance with law, and acting for the purpose of said County, shall and will provide all the material and perform practically all the work mentioned in the specifications (the addenda and proposal are hereby made a part of said specifications and this contract) and shown on the revised drawings
28 prepared by the Architect for building the New Court House at Columbiana, Alabama, which drawings and specifications are adopted by the Board of County Commissioners of said County, and by which said plans and specifications the contractor is required by said Board of County Commissioners to perform the work therein.

Article II.

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Should the contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen, called for in the contract, or of materials, or fails in any respect to prosecute the work with promptness and diligence, or fails in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the Superintendent and Architect, the Board of County

Commissioners shall be at liberty after thirty days' written notice to the contractors to provide any such labor and material and to deduct the cost thereof from any money then due or thereafter to become due to the contractor under this contract; and if the Superintendent and architect shall certify that such refusal, neglect or failure is sufficient grounds for such action, the Board of County Commissioners shall be at liberty to terminate the employment of the contractor for said work, and to enter upon the premises and take possession of all materials, tools and appliances thereon, for the purpose of completing the work comprehended under this contract, and to employ any other person or persons to finish the work and to provide material therefor; and in case of such discontinuance of the employment of the contractor they shall not be entitled to receive any further payment under this contract until the said work be wholly finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the Board of County Commissioners in finishing the work, such excess shall be paid by the County or the Board of County Commissioners to the contractor, but if such expense shall exceed such unpaid balance, the contractor shall pay the difference to the Board of County Commissioners, said Superintendent and Architects' certificate of default being subject to review as to facts by the Board of County Commissioners and the contractors
29 at the request of the contractor.

Article III.

It is agreed and stipulated that the general intentions of the plans and specifications is that the entire work, labor and material shall be executed in a practical workmanlike manner, and the contractor agrees to fully and faithfully carry out any and all orders

given him or his servants by said superintendent and architects, which are in accordance with said contract. The contractor alone shall have the right at any time to call upon the Architect for such orders, details or drawings, directions or explanations or explain any conflict between said plans, specifications, addenda, proposal or this contract, if he shall desire such explanations, or directions, and when he has received same, he will, upon their explanation, be in full compliance with this contract. It shall be the duty of the superintendent and architect to inspect all labor and materials as the work progresses, and the acceptance or rejection resulting from said inspection, shall be final. When discretionary power of interpretation, approval, inspection or authority of any kind is given to the superintendent and architect in the specifications of this contract, it is agreed by the parties of the second part, that the said discretion, interpretation, inspection, approval or authority shall be exercised at the proper time and in a manner so as not to delay the progress of the work. It is the intent of these stipulations that

when the contractor has fully complied with the directions of the superintendent and architects, or fulfilled the contract, as interpretated by the Superintendent and Architect, then the contractor shall be considered to have fully complied with this contract. It is further agreed by the parties hereto, that any certificate given by the superintendent and architect under this contract shall be conclusive and shall as between the parties to this contract and the assignee of the contractor establish conclusively the facts therein stated, and the final certificate given for the final payment to be conclusive evidence of the full performance of this contract.

30 Article IV

The contractor should bear all losses resulting on account of the expense to the building caused by rain. He shall take all necessary precautions to insure against accidents or injury to person or persons employed in the construction of the work, and shall idemnify and save harmless thereafter the County from all charges resulting from any persons or person being injured by the negligence of himself or em- as well as all claims for patent rights for material used in the building. The contractor shall give such personal attention and supervision on the work as shall be necessary to carry it out promptly in the time set forth in the contract. During his absence he shall at all times have a competent man in charge to whom the superintendent

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and Architect may look for the proper execution of the contract. If in the opinion of the superintendent and architect, such representative is not fully competent or fails to carry out instructions, he will notify the contractor of this in writing and such person shall be immediately relieved and a competent and satisfactory man employed in his stead.

Article V.

It is further agreed that in case the party of the first part the contractor, shall abandon the work, the Board of County Commissioners is hereby authorized and empowered to pay any labor- or laborers who may have been employed by said party of the first part upon the above described work, out of the funds remaining, or becoming due to the said party of the first part, under the contract upon the certificates of the superintendent and architect, and in every such case the superintendent and architect is authorized and empowered hereby to ascertain the amount or amounts so due to such labor- or laborers from said party of the first part in such manner and upon such proof as may be sufficient, giving notice of such proceedings to the party of the first part. And the amounts or amount found to be due and owing to such labor- or laborers shall be paid over by said County to such labor- or laborers. And a sufficient amount of any estimate may be withheld from the con-

tractor until all claims for labor and material on his con-
31 tract shall have been satisfied or provided for by satisfactory bond.

Article VI.

It shall be the duty of the superintendent and Architect as the work progresses to inspect and accept or reject any and all material on the ground to be placed in the building, or any work done on said building, or any working drawings made for said building, and the same shall be deemed his interpretation and shall be final and satisfactory within the meaning of this contract and in full compliance with same.

Article VII.

Should the contractor be obstructed or delayed in the prosecution or completion of his work, by the act, neglect, delay or default of the Board of County Commissioners, or the superintendent and architect, or any other contractor employed by the Board of County Commissioners upon

Page 532.

the work or by any damage that may happen by fire, lightning, earthquake or cyclone, or by strikes directly affecting the contractor, or by the abandonment of the work, by employees, or by delays in transportation, or by unusual action of the elements, or by injunction of litigation or by epidemic, or by any causes beyond the control of the contractor, then the time herein fixed for the completion of the work, shall be extended for a period equivalent to the time lost by reason of any or all of the causes aforesaid.

Article VIII.

The party of the first part shall within thirty days file a satisfactory bond in the sum of thirty thousand ($30,000.00) Dollars to secure the completion of this contract. The contractor shall begin work within thirty days from the date of this contract and shall proceed so as to complete the same within two hundred and fifty (250) actual working days, rainy days and holidays excluded from the final date fixed in the specifications for beginning, it being expressly agreed and understood that, should the contractor fail to complete the work within the stipulated time for the completion, in this contract, he shall suffer a deduction of the contract
32 price in the sum of Fifteen (15.00) Dollars per day for each and every working day said work remains incomplete or is so delayed.

Article IX.

This contract or addenda or the proposal take- precedence over the specifications and plans in all matters wherein they are in conflict.

When the specifications do not particularly mention in detail the kind of material to be used, and particularly class of labor to be employed, but are indefinite, or are general in their terms in calling for labor or material of the highest grade, it is understood and agreed that said specifications shall mean good, practical labor and material of the general class of work of this building, and such as is in general use for a building of this kind. The contractor shall prepare and furnish working drawings and the same shall be consistent with this contract.

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Article X.

It is agreed, understood and stipulated that the party of the second part, shall make all their acts in connection with this contract and this court house business conform accurately to the laws of the State of Alabama, and in case of a question arising as to their having done so, and there should be suit by injunction or otherwise respecting these acts, or the prosecution of the work of the making of this contract, or the issuance of the warrants respecting the contract price, or the collection of money due under this contract, the party of the second part shall pay all costs of defending said suits and all costs that the contractor or his assignee of this contract, or said warrants, may incur for the collection of any money which may be due the contractor or his assigns including a reasonable attorney's fee, and said second party shall hold the said first party harmless in all events.

Article XI.

It is further agreed and contracted that the party of the second part, the County of Shelby, shall and does hereby agree and promise to pay to the party of the first part, B. C. Bynum Construction Company, for the erection of the Court House in accordance with
533 the said plans and specifications as identified the price and sum of ($71,890.00). Seventy-one thousand, eight hundred and ninety dollars, (subject to such omissions and additions as are herein provided for in case of change) in regular annual installments together with interest thereon at the rate of six and one-half per centum (6½%) per annum, payable annually from date of January 1st, 1906, except as otherwise provided, and said installments shall be due and become payable as follows, to-wit:

(1) Due and payable on the 1st day of Feb. 1907 the sum of ($1,000).

(2) Due and payable on the 1st day of Feb. 1908 the sum of $1,500.

(3) Due and payable on the 1st day of Feb. 1909 the sum of $2,000.

(4) Due and payable on the 1st day of Feb. 1910 the sum of $2,500.

(5) Due and payable on the 1st day of Feb. 1911 the sum of $2,500.

(6) Due and payable on the 1st day of Feb. 1912 the sum of $3,000.

(7) Due and payable on the 1st day of Feb. 1913 the sum of $3,000.

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(8) Due and payable on the 1st day of Feb. 1914 the sum of $3,500.

(9) Due and payable on the 1st day of Feb. 1915 the sum of $3,500.

(10) Due and payable on the 1st day of Feb. 1916 the sum of $4,000.

(11) Due and payable on the 1st day of Feb. 1917 the sum of $4,000.

(12) Due and payable on the 1st day of Feb. 1918 the sum of $4,500.

(13) Due and payable on the 1st day of Feb. 1919 the sum of $4,500.

(14) Due and payable on the 1st day of Feb. 1920 the sum of $5,000.

(15) Due and payable on the 1st day of Feb. 1921 the sum of $5,000.

(16) Due and payable on the 1st day of Feb. 1922 the sum of $5,000.

(17) Due and payable on the 1st day of Feb. 1923 the sum of $5,000.

(18) Due and payable on the 1st day of Feb. 1924 the sum of $5,000.

(19) Due and payable on the 1st day of Feb. 1925 the sum of $5,000.

(20) Due and payable on the 1st day of Feb. 1926 the sum of $2,390.

which foregoing principal sums with the interest added to them create and make the regular total installments of the contract price and the total annual payment *about* as follows, or about as follows:

(1) Due and payable Feb. 1st, 1907 the sum of $5,672.85.
(2) Due and payable Feb. 1st, 1908 the sum of $6,107.85.
(3) Due and payable Feb. 1st, 1909 the sum of $6,510.35.
(4) Due and payable Feb. 1st, 1910 the sum of $6,880.35.
(5) Due and payable Feb. 1st, 1911 the sum of $6,717.85.
(6) Due and payable Feb. 1st, 1912 the sum of $7,065.35.

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(7) Due and payable Feb. 1st, 1913, the sum of $6,860.35.
(8) Due and payable Feb. 1st, 1914, the sum of $7,165.35.
(9) Due and payable Feb. 1st, 1915, the sum of $6,937.85.
(10) Due and payable Feb. 1st, 1916, the sum of $7,210.35.

(11) Due and payable Feb. 1st, 1917, the sum of $6,950.35.
(12) Due and payable Feb. 1st, 1918, the sum of $7,190.35.
(13) Due and payable Feb. 1st, 1919, the sum of $6,897.85.
(14) Due and payable Feb. 1st, 1920, the sum of $7,105.35.
(15) Due and payable Feb. 1st, 1921, the sum of $6,580.35.
(16) Due and payable Feb. 1st, 1922, the sum of $6,455.35.
(17) Due and payable Feb. 1st, 1923, the sum of $6,130.35.
(18) Due and payable Feb. 1st, 1924, the sum of $5,935.35.
(19) Due and payable Feb. 1st, 1925, the sum of $5,610.35.
(20) Due and payable Feb. 1st, 1926, the sum of $2,675.35.

And the balance provided that — additional material and labor should be required, — shall be paid with interest at (6½%) per annum from date hereof, on the 1st day of February of the years following 1926 at the rate of Five thousand Dollars ($5,000.00) principal, and the interest as aforesaid annually. It being expressly understood that this contract price for the material and work aforesaid, is subject to such deductions

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and to such additions as are and have been provided for in *in* case of changes, and if there are *in* such changes to this price, the same shall be provided for in the annual installments subsequent to 1926, and shall be added to this contract price of Seventy-one thousand, eight hundred and ninety ($71,890.00) dollars and in the event there should be deductions as elsewhere provided for in this contract, from the above named contract price, then the deductions as agreed upon shall be made from the contract price. Be it further understood and agreed that said Court of County Commissioners, and said County shall have prepared, issued and signed, as evidence of said several installments Shelby County Court House warrants and certificates of indebtedness, regularly drawn upon the County Treasurer of Shelby County, Alabama, dated the same date as this contract and corresponding in amounts with the several amounts hereinabove stated as installments, to be paid as the price of this contract, and the said warrants or certificates of indebtedness representing said amounts or amount — installment payments shall be issued with coupons attached to them representing the interest thereon of the same date and of the denominations, and in a manner satisfactory to the first party; said warrants or certificates of indebtedness and the coupons when properly signed shall be delivered to Probate Judge A. P. Longshore, Trustee, and shall be held in trust by *them* and delivered to B. C. Bynum Construction Company, or their assigns, from time to time as the work progresses, upon the certificate of the architect that the said warrants or certificates of indebtedness have been respectively earned. The said delivery of said warrants shall be full and conclusive evidence of the performance by the contractor of his obligations under the contract in all of its parts, and the delivery of any of said certificates shall be a waiver by the County and the County Treasurer

of all defense of every nature to the payment of said warrants and of the amount of the contract price represented by said warrants or certificates, and the County declares said warrants when issued and delivered to be in every way valid and binding obligations upon the County. It being expressly agreed and understood that the debt evidenced by the said warrants or certificates issued to the contractor,—the right to receive payment of the contract price—shall be divisable, and the assignee or holder of any of the warrants and certificates is and

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shall be recognized as entitled to payment and to receive the part of the contract price represented by said County Court House warrants, just as the contractor would be entitled to do as the work progresses said Court of County Commissioners shall certify to the Treasurer of such County that such warrants have been issued and are an obligation of the County, and shall direct said Treasurer to register same upon presentation and pay same to B. C. Bynum Construction Company, or their assigns, or bearer, according as the same falls due and become payable, the form of the above
36 named warrants shall be specially prepared and signed by the Probate Judge and principal Judge of the Court of County Commissioners, and countersigned by the Clerk of the Probate officer for and on behalf of the County, in a manner and of denomination satisfactory to the parties hereto. It being expressly understood that the contract price for the material and work, as aforesaid, is subject to such deductions and to such additions as are and have been provided for in proposal, and in case of changes and additions of material and work at unit prices in proposal, said proposal being hereto attached and made a part of this contract, and if there are such additions to this price, the same shall be added to the contract price, and in the event there should be deductions as elsewhere provided for in this contract, from the above named contract price, then the deductions as agreed upon, shall be made from the contract price. It is expressly agreed that the initial price set forth in this contract is subject to, and hereby contracted for the addition of any and all items in proposal, or any work at unit prices set forth in the proposal and payment made shall be in sequence as the work progresses, and the final contract price shall be determined by adding all work at the unit prices set forth in proposal. All additional work in connection with said building is hereby contracted for with*in* the contractor at the unit price named in proposal.

Article XII.

It is further stipulated, agreed and understood that the

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approval of the work by the superintendent and Architect and the acceptance of same by him, and the Board of County Commissioners

shall be taken and accepted as a complete performance of all the terms of this contract.

Article XIII.

The contractor shall hold and retain possession of the work until paid for, and the final payment shall be made when the work is completed. If at any time there shall be evidence of any lien *of* claim *of claim* for which, if established, the Board of County Commissioners *of* the said premises might become liable, and which is chargeable to the contractor, the Board of County Commissioners shall have the right to retain out of any payment then due, or hereafter to
37 become due an amount sufficient to completely indemnify them against such lien or claim. Should there prove to be any such claim after all payments are made the contractor shall refund to the Board of County Commissioners all moneys that the latter may be compelled to pay in discharging any lien on said premises made obligatory in consequence of the contractor's default. Provided, however, that should there be any claim against the property either by lien or otherwise, the contractor shall be entitled to payment upon his giving good and sufficient bond to the Board of County Commissioners, that he will hold them harmless and fully satisfy and discharge all items, liens for material furnished, or labor performed for said contractor in or on structure of building. The Board of County Commissioners shall during the progress of the work, and until the final payment of the last installment due under this contract, maintain full insurance on said work, in its own name, and the name of the contractor, against loss or damage by wind or fire. The policy shall cover all work incorporated in the building and all material for same in or about the premises, and shall be made payable to the parties thereto, as their interest may appear.

Article XIV.

It is further stipulated, agreed and understood that the said party of the second part, Shelby County, Alabama, hereby binds and obligates itself, by its duly constituted authorities, to levy and collect each year and annually hereafter, upon the

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total taxable property of said County, according to the assessed value thereof, a special tax of one fifth of one per centum, or such portion thereof as may be necessary to meet and discharge the annual payments next to come due on account of this contract.

Said special tax or so much thereof as may be necessary to be applied when collected exclusively to the annual payments agreed to in this contract, and the surplus of said one fifth of one per centum may be applied to any lawful purpose.

Article XV.

And the said party of the second part, the Board of County Commissioners of Shelby County, Alabama, hereby promises and
38 agrees with the said party of the first part, B. C. Bynum Construction Company, contractors, to employ them, and does hereby employ them, to provide the materials, and to do the said work according to the terms and conditions herein contained and referred to, for the price aforesaid, and hereby contracts to pay the same at the time and in the manner and upon the conditions above set forth.

Article XVI.

It is hereby agreed and understood that the contractor herein shall have the right to assign and transfer to any person, or persons, all rights, privileges, claims or demands against the County of Shelby, accruing to the- by virtue of this contract, or arising out of the contract, and to subrogate said transferee or assigns to all rights, demands, liens, and privileges belonging to them under the contract, to be exercised by said transferee or said assigns in the same manner as said B. C. Bynum Construction Company, contractor, could have done or exercised.

Article XVII.

The said parties for themselves and their successors, hereby agree to the full performance of the covenants herein contained.

In witness whereof the parties to these presents have hereunto set their hands and seals in duplicate the day and year above written.

B. C. BYNUM CONSTRUCTION CO., [SEAL.]
Party of the First Part.

By ——— ———.

SHELBY COUNTY, STATE OF ALABAMA,
Through Its Board of County Commissioners,
By A. P. LONGSHORE,
Probate Judge of said County,
Party of the Second Part.

Minutes Commissioners' Court, Term 1905.

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Sec. 7. Be it further resolved by the Court of County Commissioners of Shelby County, Alabama, constituting the Commissioners' Court, that the said foregoing contract having been duly signed and executed after a strict compliance with the order made by this Court on the 10th day of July 1905, whereby it was directed that bids be filed before the Court up to six o'clock P. M. on the 24th

day of July, 1905, with plans and specifications made for the new Court House, and whereas notice had been given in the Age Herald, a daily newspaper published in the City of Birmingham, and the People's Advocate a weekly paper published in Columbiana; and whereas said notice as shown by the records in the office of the Probate Judge, were twice inserted in different issues of the said foregoing named newspapers and which said notice contained in said newspaper was as follows:

Vol. XIV. The People's Advocate. No. 6.

The Love of Country Guides.

COLUMBIANA, ALABAMA, Thursday, July 20th, 1905.

Notice.

Sealed proposals in duplicate will be received until 6 o'clock P. M. on the 24th day of July, 1905, for the erection of a court house at Columbiana, Shelby County, Alabama, as per the plans and specifications furnished by the Bruce Architecturai Company.

Plans are on file in the office of Probate Judge of Columbiana and at the office of the Bruce Architectural Company, Architects, of Birmingham, Alabama.

Bids must be made out on a regular proposal blank furnished by the architects and must be accompanied by a certified check of thirty per cent of the bid made payable to A. P. Longshore, Columbiana, Alabama.

The right is hereby reserved to reject any or all bids and

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in figuring out this work the bidders do so under these conditions.

(Signed) A. P. LONGSHORE,
Probate Judge.

NOTE.—A copy of the foregoing notice also appears in the issue of the 13th of this newspaper.

And the Court having met on the 24th day of July, at the time and place fixed, and after opening and receiving said bids and it appears to the Court from an examination of the bids filed that the B. C. Bynum Construction Company were the lowest and best bidders for the erection of said Court House for the sum shown in the foregoing contract, which said contract has been read and understood by the Court therefore the same is hereby approved, confirmed and ratified, in all of its parts, and the Probate Judge and presiding officer of this Court is hereby authorized and directed to cause said contracts to be properly recorded upon the minutes of this Court and in the Deed record of the County. And said Probate Judge is hereby authorized and directed

to provide and furnish the contractors or his assigns certified copies of all matter, records, or papers in his office called for, at the expense of the County and under section 959 and 1375 of the Code and Vol. 66-Ala.; See Ct. Rep. page 184, and a Circuit Court decision of Hon. J. C. Richardson, Circuit Judge, rendered in Crenshaw County, Alabama, said Probate Judge is employed and allowed 15 cents per hundred words for recording the proceedings of the Court in full, so as to make the record show all that was done in and about the Court House business and the issuance of warrants, to pay for the same. And this order shall apply to all resolutions, orders and contracts heretofore, now or hereafter adopted and made in regard thereto, or in any way concerning business relating to the erection of the New Court House.

Sec. 8. Be it further resolved by the Court that whereas Shelby County is bound and will be bound to pay said B. C. Bynum Construction Company or their assigns, the true, just and full sum named in the foregoing contract for building a County Court House for said County, and whereas said Court has agreed and promised

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to pay the same principal and interest in the installments as therein shown on the 1st day of February of each year thereafter beginning February 1st, 1907, until both the principal and interest of said debt and contract price are fully paid: Now, therefore, in compliance with the contract, the probate Judge is hereby ordered and directed to draw upon the County Treasurer of Shelby County, Alabama, and sign and seal in behalf of said County the following principal and interest coupons Court House Warrants, amounting in the aggregate as follows, and which foregoing principal sums, with the interest, make when combined, the installments and the total payments as follows, or about as follows:

41 Principal and Interest Combined.

(1) Due and payable Feb. 1st, 1907, the sum of $5,672.85.
(2) Due and payable Feb. 1st, 1908, the sum of $6,107.85.
(3) Due and payable Feb. 1st, 1909, the sum of $6,510.35.
(4) Due and payable Feb. 1st, 1910, the sum of $6,880.35.
(5) Due and payable Feb. 1st, 1911, the sum of $6,717.85.
(6) Due and payable Feb. 1st, 1912, the sum of $7,065.35.
(7) Due and payable Feb. 1st, 1913, the sum of $6,860.35.
(8) Due and payable Feb. 1st, 1914, the sum of $7,165.35.
(9) Due and payable Feb. 1st, 1915, the sum of $6,937.85.
(10) Due and payable Feb. 1st, 1916, the sum of $7,210.35.
(11) Due and payable Feb. 1st, 1917, the sum of $6,950.35.
(12) Due and payable Feb. 1st, 1918, the sum of $7,190.35.
(13) Due and payable Feb. 1st, 1919, the sum of $6,897.85.
(14) Due and payable Feb. 1st, 1920, the sum of $7,105.35.
(15) Due and payable Feb. 1st, 1921, the sum of $6,580.35.
(16) Due and payable Feb. 1st, 1922, the sum of $6,455.35.

(17) Due and payable Feb. 1st, 1923, the sum of $6,130.35.
(18) Due and payable Feb. 1st, 1924, the sum of $5,935.35.
(19) Due and payable Feb. 1st, 1925, the sum of $5,610.35.
(20) Due and payable Feb. 1st, 1926, the sum of $2,675.35.

Be it further resolved, that said foregoing installments and the warrants representing them shall be divisible in such denominations as may be satisfactory to the contractor, and the same shall be delivered to him as earned, once in each month,—when payments are made upon the certificates of the Architect as the work progresses and as earned by him under the terms of his contract. The above sums representing the total amount of money the County must pay out under its agreement to the contractor or his assigns for erecting the Court House, said sums are hereby voted, appropriated

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and set apart out of the special revenue raised and to be raised by taxation in each year of the foregoing named years, and in the event there should be no special revenue available at the time the warrants are presented for payment, then in that event, the Treasurer shall pay same out of the General or other funds in the Treasury not otherwise appropriated, and until said Court House debt prin-
42 cipal and interest shall be fully paid.

Sec. 9. Be it further resolved by the Court that the form of said Court House warrants, their divisions into maturities, numbers, sums and amounts as well as the special resolution of the Court providing, authorizing and protecting them, shall all be carefully and legally prepared and adopted, and copies of the same certified to at the expense of the County, and which shall be satisfactory to the County and Contractor. That said warrants shall be duly lithographed and held in trust for the contractor by the Probate Judge, who shall not deliver any of said warrants to the contractor until:

1st. A claim for the labor and material furnished, is made out by account duly itemized and sworn to by said contractor or some other person in his behalf, who has personal knowledge of the facts sworn to, and according to section 1417 of the Code of 1896.

2nd. That such claim shall be accompanied by a proper certificate of the County's architect, or some competent substitute appointed by the Court, declaring the work and material furnished to be satisfactorily done and supplied to the building for the County according to the contract, and which certificate is provided for in the County's contract with Contractor, and

3rd. Said claim shall be presented to the Court of County Commissioners of Shelby County for examination, refusal or audit and allowance, and when allowed the same shall be registered by section 1416 of the Code according to a special form.

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Ordered that the account and claim of G. W. L. Smith of Brewton, Alabama, be and the same is hereby audited and allowed when the

same is itemized and duly sworn to, as required by law, and the Probate Judge is authorized to pay such claim as shown by said sworn account.

Minutes of the Court of County Commissioners of Shelby County, Alabama.

Regular Adjourned July Term, 1905.

Second Monday in September, 1905, Columbiana, Alabama.

43 STATE OF ALABAMA,
Shelby County:

Court of County Commissioners of Shelby County, Regular Adjourned July Term, 1905.

Be it remembered that at a regular meeting and adjourned term of the Court of County Commissioners of Shelby County, State of Alabama, held at the regular meeting place in the Court House by virtue of Section 955 of the Code of 1896, in the city of Columbiana, State of Alabama, on the 11th day of September, 1905, at which regular meeting a quorum was present, consisting of the following members, to-wit: A. P. Longshore, Probate Judge, and Commissioners John E. Dyke, Pleasant Shaw, R. B. Posey and R. J. Griffin, the following among other proceedings were had: Accordingly a resolution being offered, and upon motion made, and vote taken, the same was unanimously adopted by all the members present, which resolution is as follows:

"Resolution."

Whereas, by order of the Court heretofore made, authorizing A. P. Longshore, as Probate Judge to execute in behalf of the County, and draw warrants of sufficient numbers and denominations to equal the contract price of seventy-one thousand, eight hundred and ninety ($71,890.00) Dollars which the County agreed and promised to pay to B. C. Bynum Construction Company, contractors, for building the County Court House within the corporate limits of the City of Columbiana, and whereas, Alabama Court House warrants and the sums of called for by them when representing the consideration and contract

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price agreed upon for building a Court House, draw and bear legal interest when issued under Chapter 31 of the Code of 1896 and conform to the opinion and follow the decrees and judgments rendered by the Supreme Court of the State of Alabama under the present Constitution and as laid down by said Court in the more recent case of Matkin et als. v. Marengo County, Alabama, Supreme Court Report Vol. 137, page 155; and the case of W. J. Talley et al. v. the

Court of County Commissioners of Jackson County, et al. decided at the November term of the Court on April 18th, 1905, and by
44 *the* virtue of which said County has made said contracts and issued said warrants and whereas, said warrants fall due and become payable during each year from 1907 to 1926, both inclusive, said contract price being ordered divided into twenty (20) installments, payable annually for twenty years, the first of said installments becoming due Feb. 1st. 1907, and the remaining installments falling due annually thereafter until 1926, inclusive, and

Whereas, the forms of said contractor's application, the form of the Architect's Certificate, the form of the Court's order of allowance, and the form of said warrants and coupons are as yet not determined upon and fixed:

Now, therefore, it is hereby ordered:

1st. That the Court of County Commissioners of Shelby County, Alabama, issue, and the Probate Judge is hereby authorized and directed to execute and draw upon the Treasurer of Shelby County the following warrants *of* certificates of indebtedness, bearing date heretofore agreed upon and payable at the office of the County Treasurer at Columbiana, Alabama, which warrants when executed shall be delivered to and held by the Probate Judge of said County in trust for the Contractor, and said trustee shall place his certificate of identification upon the back of said warrants, and which said warrants shall mature in installments. These installments shall be twenty in number from one to twenty, both inclusive, and shall fall due and become payable on February the first of each year beginning with the year 1907, and ending with the year 1926, both inclusive. And said installments shall compose in the aggregate the whole amount of money the County agreed and promised to pay the contractor, both as to the principal debt and interest accruing and shall be represented by warrants and coupons warrants issued to represent and

satisfy the contract price and which installments are and become payable in each of said years as follows: About the following amounts, to-wit:

Principal and Interest Combined.

(1) Due and payable Feb. 1st. 1907, the sum of $5,672.85.
(2) Due and payable Feb. 1st. 1908, the sum of $6,107.85.

45

(3) Due and payable Feb. 1st. 1909, the sum of $6,510.35.
(4) Due and payable Feb. 1st. 1910, the sum of $6,880.35.
(5) Due and payable Feb. 1st. 1911, the sum of $6,717.85.
(6) Due and payable Feb. 1st. 1912, the sum of $7,065.35.
(7) Due and payable Feb. 1st. 1913, the sum of $6,860.35.
(8) Due and payable Feb. 1st. 1914, the sum of $7,165.35.
(9) Due and payable Feb. 1st. 1915, the sum of $6,937.85.
(10) Due and payable Feb. 1st. 1916, the sum of $7,210.35.

(11) Due and payable Feb. 1st, 1917, the sum of $6,950.35.
(12) Due and payable Feb. 1st, 1918, the sum of $7,190.35.
(13) Due and payable Feb. 1st, 1919, the sum of $6,897.85.
(14) Due and payable Feb. 1st, 1920, the sum of $7,105.35.
(15) Due and payable Feb. 1st, 1921, the sum of $6,580.35.
(16) Due and payable Feb. 1st, 1922, the sum of $6,455.35.
(17) Due and payable Feb. 1st, 1923, the sum of $6,130.35.
(18) Due and payable Feb. 1st, 1924, the sum of $5,933.35.
(19) Due and payable Feb. 1st, 1925, the sum of $5,610.35.
(20) Due and payable Feb. 1st, 1926, the sum of $2,675.35.

The above sums representing the amount of money the County must pay out under its agreement to the contractor or his assigns for erecting the New Court House, the same are hereby voted and appropriated out of the special revenues raised for each of the years above named.

Now, therefore, in order to comply with the agreement made with said contractors, and to better subserve the fiscal convenience of the County, Commercial usage, and to more nearly comply with and conform to the opinions, judgments and decrees of said Supreme Court of the State of Alabama.

It is hereby ordered that each of said installments and the proposed warrants representing them *to* be made divisible or subdivided into warrants of smaller denominations and amounts in such a manner as that the principal sum of said contract price falling due in any of said years shall be represented by one or several large or principal warrants, and the remainder or interest falling due in the same year be represented by a sufficient number of smaller warrants or coupons attached to said principal warrants. That said principal warrants shall be styled Shelby County Court House Warrants and certificates and shall be dated as heretofore ordered, shall be 144 in num-
46 ber, from one to 144, both inclusive, be of $500.00 denomination except as hereinafter set out and shown. That said warrants and the sums — money called for by them upon their face shall bear interest at the rate of (6½%) six and one half per centum from January 1st, 1906, payable annually on the 1st day of February of each year beginning February 1st, 1907, hereafter during the existence of said indebtedness, which interest shall be evidenced by interest coupons annexed to said warrants and both principal and interest are hereby made payable at the office of the County Treasurer at Columbiana, in said State and County, said warrants and coupons shall be made payable to said contractors, their assigns or bearer and shall be signed in behalf of Shelby County, through its court of County Commissioners, by the Probate Judge and have his official seal affixed thereto, provided that said coupons shall not be sealed but may be signed by affixing to them the facsimile signature of the Probate Judge duly lithographed and that said warrants and coupons annexed to them shall represent the Court House debt and amounts due the contractor and when so subdivided the principal warrants shall have the following numbers, maturities, and amounts, to-wit:

Numbers.	Maturities.				
1, 2	$1,000.	due	Feb.	1st,	1907
3, 4, 5	$1,500.00	"	"	"	1908
6, 7, 8, 9	$2,000.00	"	"	"	1909
10, 11, 12, 13, 14	$2,500.00	"	"	"	1910
15, 16, 17, 18, 19	$2,500.00	"	"	"	1911
20, 21 22, 23, 24, 25	$3,000.00	"	"	"	1912
26, 27, 28, 29, 30, 31	$3,000.00	"	"	"	1913
32, 33, 34, 35, 36, 37, 38	$3,500.00	"	"	"	1914
39, 40, 41, 42, 43, 44, 45	$3,500.00	"	"	"	1915

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46, 47, 48, 49, 50, 51, 52, 53	$4,000.00	"	"	"	1916
54, 55, 56, 57, 58, 59, 60, 61	4,000.00	"	"	"	1917
62, 63, 64, 65, 66, 67, 68, 69, 70	4,500.00	"	"	"	1918
71, 72, 73, 74, 75, 76, 77, 78, 79	4,500.00	"	"	"	1919
80, 81, 82, 83, 84, 85, 86, 87, 89	5,000.00	"	"	"	1920
90, 91, 92, 93, 94, 95, 96, 97, 98, 99	5,000.00	"	"	"	1921
100, 101, 102, 103, 104, 105, 106, 107, 108, 109	5,000.00	"	"	"	1922
47					
110, 111, 112, 113, 114, 115, 116, 117, 118, 119	$5,000.00	"	"	"	1923
120, 121, 122, 123, 124, 125, 126, 127, 128, 129	5,000.00	"	"	"	1924
130, 131, 132, 133, 134, 135, 136, 137, 138, 139	5,000.00	"	"	"	1925
140, 141, 143, 144	2,390.00	"	"	"	1926

Which said warrants and said interest coupons annexed to them upon their presentation and surrender at the office of the County Treasurer shall be fully paid according *at* any of them shall become due and payable. Second, That the form of the contractor's application and claim shall be substantially as follows:

Contractors' Application Claim No. —.

COLUMBIANA, ALA., — Day of ——, 1905.

STATE OF ALABAMA,
Shelby County:

Hon. Court of County Commissioners of Shelby County, Alabama: Bruce Architectu-al Company, Architects: Hon. A. P. Longshore, Trustee.

GENTLEMEN: Please examine my claim against Shelby County, Alabama, for the sum of — Dollars and cents, due us this day for work done, labor performed and material furnished the County in and about the County Court House building as shown by Exhibit

"A" hereto attached and made a part of this application which sum please pay and oblige.

Yours respectfully,

—— ——, *Contractor.*

EXHIBIT "A."

STATE OF ALABAMA,
Shelby County:

I, A. P. Longshore, Judge of Probate in and for said County and State, hereby certify that before me this day personally appeared —— —— in behalf of B. C. Bynum Construction Company, Contractors, and who being by me first duly sworn, deposes and says that he has personal knowledge of the facts herein stated, and made for and in behalf of B. C. Bynum Construction Company, Contractors, and builders of the County Court House of Shelby County,
48 Alabama, and that said contractors have performed work and labor and furnished the material to the amount and value below stated, in and about the building of the Court House, under their contract with the County of Shelby dated the 25th day of July, 1905, which amount and sum has been earned and represents a part of the contract price for erection of the entire building as follows, to-wit:

——$.
——$.

By —— ——, who has personal knowledge of the facts above sworn to, sworn to and subscribed to before me this the — day of ——, 1905.

—— ——,
Probate Judge, Shelby County.

Third. The Architect's Certificate shall be substantially of the following form:

Architect's Certificate to Claim No. —.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALABAMA, — Day ——.

Hon. A. P. Longshore, Trustee, and Hon. Court of County Commissioners of Shelby County, Alabama.

GENTLEMEN: We, the Bruce Architectu-al Company, heretofore duly appointed architects and superintendents of the building and erection of the Court House at Columbiana for Shelby County, Alabama, within the corporate limits of said town, hereby certify that we have carefully inspected all of the material furnished to and work done on said court house up to this time. We further certify that the

work done and material furnished and shown by the above foregoing itemized sworn bill of account, marked Exhibit "A" rendered to us by B. C. Bynum Construction Company, contractors, and builders of said Court House, has been furnished, done and supplied to the County in a skillful and workmanlike manner, and to our satisfaction, the same being in conformity with the plans and specifications called for by the County's contractor. We further certify that said County has actually received the work and labor done and material furnished by said contractors under their contract with
49 the County, dated the 25th day of July, 1905, to the amount and value of — Dollars and — cents, as shown by Exhibit "A" and that said contractors have a just claim against the County, *in* full, true and correct therein mentioned, which sum represents the proportionate amount of the contractors' price earned by said contractors, we have personally examined into the correctness and justness of said claim, and know the same to be now due and payable; we further certify that said contractors are now entitled to receive from the trustee provided for in the contract of the County, and from your honorable body so many of the certificates of indebtedness and warrants of the County as may be sufficient to pay said sum earned and hereinabove certified.

Respectfully yours,

BRUCE ARCHITECTU-AL COMPANY.

By —— ——,

Architects and Superintendents of the Shelby County Court-house Building.

Fourth. Be it further ordered, that the form of the order allowing said claims by the Court of County Commissioners shall be as follows:

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Court of County Commissioners.

Allowance of Contractor's Claim No. —.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALABAMA, — Day of ——, 1905.

Court of County Commissioners, Regular Adjourned —— Term, 1905.

At this regular meeting and adjourned —— term 1905 of the Court of County Commissioners of Shelby County, Alabama, held on the — day of ——, 1905, at its regular meeting place in the City of Columbiana, Ala., a quorum was present consisting of the following members: A. P. Longshore, Probate Judge, and Commissioners J. E. Dyke, Pleasant Shaw, R. B. Posey and J. R. Griffin, the application and claim No. — of B. C. Bynum Construction Company,

contractors and builders of the County Court House for said County,
on a site within the corporate limits of the City of Columbiana,
50 designated by the Court of County Commissioners was presented to them for allowance for work and labor done and material furnished the County under their contract with the County amounting to — Dollars and — cents. Whereupon the Court proceeded to examine said claim and finding the same to be a preferred claim against the County of Shelby that the same was duly itemized and sworn to as required by law, and that said claim was accompanied by a proper certificate of the County Architects in supervision of the erection of said building to the effect that the County has actually received the benefit of said amount under its contract, and that the work and material were satisfactory. Thereupon the Court being further and fully advised in the premises, and upon finding that the County has received the benefit claimed to the amount of said sum, as shown by said contractor's claim. It is therefore ordered that said claim be received, accepted, approved, audited, registered, and allowed in full. That the Trustee, Probate Judge A. P. Longshore, deliver to said contractors, principal (interest bearing) Court House warrants and certificates numbered from — to — inclusive, for the sum of — Dollars, which principal warrants shall have annexed to them coupon warrants sufficient to represent and pay for the interest

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accruing on said principal warrants and so much of the contract price earned and represented by said principal warrants, and sufficient to cover the contractor's claim, and that all of said warrants be duly signed and sealed in behalf of the County by A. P. Longshore, as Probate Judge of the County, as of the 25th day of July, 1905, and that he deliver the same to said contractors as per contract in payment of their claim No. —, which claim represents a part of the debt and contract price now earned by the contractors under their contract *which* the County dated the 25th day of July, 1905, and which the County is now justly, due them, provided that said coupon warrants shall not be sealed, but shall be signed by the lithographed facsimile signature of the Probate Judge.

Fifth. Be it further ordered by the Court of County Com-
51 missioners, that the form of the County Court House warrants and certificates of indebtedness and coupons with their necessary varieties as to number, dates, amounts and maturities, together with the endorsements thereon shall be substantially as follows:

UNITED STATES OF AMERICA.
State of Alabama, Shelby County:

Warrant No. —; Installment No. —.

Court-house Warrant and Certificate.

Thsi is to certify that the County of Shelby, in the State of Alabama, is justly indebted to B. C. Bynum Construction Company,

contractors of the City of Montgomery, Alabama, in the principal sum of Five Hundred Dollars, which said County under and by virtue of a valid and subsisting contract has agreed and promised to pay on the 1st day of February, 19— and the Treasurer of said County is hereby authorized, ordered and directed to pay said B. C. Bynum Construction Company, their assigns, or bearer the sum of $500.00 in full settlement of the amount hereby evidenced out of the special Court House fund levied for that purpose. But should there be at any time insufficient special funds in the Treasury when this warrant or any of the annexed coupons should be presented for payment, then in that event this warrant and annexed coupon shall be paid out of the general fund or any moneys in the Treasury not otherwise appropriated, upon the presentation and surrender of this warrant and the annexed interest coupons at the office of the County Treasurer in the city of Columbiana, in the State of Alabama. It is further certified that this portion of the contract price and the said sum of money hereby representing it and shown upon the face of this warrant bears interest by virtue of a valid subsisting contract below referred to, as well as this warrant at the lawful rate of (6½%) six and one half per centum per annum from the 1st. day of February, 1906, payable annually hereafter on the 1st day of February, of each year beginning February, 1907, and as evi-
52 & 53 denced by and upon the presentation and surrender of the interest coupons hereto annexed and until all of said interest, sum and portions of the contract price shall have been fully paid. This warrant and the annexed interest coupons warrants have been issued and delivered by said County in part payment of the cost of labor and material necessary to build a court house for said county, within the corporate limits of the City of Columbiana, in said State and County, which labor and material has been actually furnished and advanced to said county, to the extent and amount of this warrant and annexed coupons for said purposes; the indebtedness represented by this and other warrants has been carefully investigated and found to be just and that said County has received the benefit thereof, and the claim for said indebtedness has been duly audited and allowed by the Court of County Commissoiners of said County,

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this warrant is one of four warrants aggregating $2,000.00 and maturing the same day, the said four warrants composing the first of twenty installments into which the entire contract price for building said Court House, to-wit: ($71,890.00) Seventy one thousand, eight hundred and ninety dollars has been divided; one of said installments being payable on the 1st day of February in each of the years 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, all of which warrants are issued to build said Court House aforesaid and according to any of said warrants be-come properly due and deliverable for material furnished and work performed for said purposes and as the erection of the Court House building progresses. It is hereby certi-

fied and recited that all conditions and things required by the Constitution and laws of the State of Alabama to be done precedent to and in issuance of this warrant, have been properly done, happened and performed, in regular and due form and time, as required by law, that this and the other warrants aforesaid are issued in compliance with the terms of the contract entered into between said County and B. C. Bynum Construction Company, contractors, on the 25th day of July, 1905, under and by virtue of a decree and order of the Court of County Commissioners made and entered on the 11th day of September, 1905, and that this certificate is
54 issued for and its delivery is conclusive proof of the fulfillment of the proportionate part of the contract represented by the amount of this warrant and that sufficient and proper provision by the levy of one fourth of one per cent special tax annually, which when collected shall be exclusively applied to the payment of this warrant and the interest coupons hereto annexed as pledged by said contract, has been and will be made sufficient to pay the amount evidenced by this warrant and the annexed coupons when and as the same mature.

In witness whereof the County of Shelby, in the State of Alabama, through its Court of County Commissioners, has caused this warrant to be

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signed by its Probate Judge of said County, and his *affied* seal to be hereto affixed and countersigned by the Clerk, and the interest coupons annexed to be signed by the lithographed facsimile signature of the Judge of Probate, as of the 25th day of July, A. D. 1905.

SHELBY COUNTY, ALABAMA.

By ——— ———,

Probate Judge of Shelby County, Ala., and Principal Judge of the Court of County Commissioners of said County.

Countersigned:

By ——— ———, *Clerk.*

Form of Coupon.

Coupon No. —.
Installment No. —. $32.50.

On February 1st, 1907,

Shelby County,

In the State of Alabama, is due and justly indebted to and the Treasurer of said County is hereby directed to and ordered to pay B. C. Bynum Construction Company, Contractors, their assigns or bearer $— out of the special court house fund at the office of the County

Treasurer at Columbiana, in said State and County, said amounts being twelve month-' interest due said contractors in the sum of money and portion of the contract price represented by Court House
55 Warrants.

No. —.

(Signed) —— ——,

Probate Judge of Shelby County, Alabama.

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Registered against the Special Court House Fund of Shelby County, Alabama, and allowed to B. C. Bynum Construction Company, contractors on their contract dated July 25th, 1905.

—— ——,

County Treasurer.

This interest sold and this debt and coupon warrant representing it assigned for value received to —— ——, or bearer.

B. C. BYNUM CONSTRUCTION COMPANY,

By —— ——, *Contractor.*

That on the back of said warrants shall appear the following forms:

Certificate Identification.

I, A. P. Longshore, Probate Judge and Trustee, do hereby certify that the annexed coupon warrants are genuine and that this is one of the warrants held in trust by me for delivery upon the lawful allowance of that portion of the contract price and debt represented by it due for building the Court House upon the order of the Court of County Commissioners of Shelby County, Alabama, and that I have delivered the same to B. C. Bynum Construction Company, contractors, in conformity with my agreement of trust together — the annexed coupons.

—— ——,

Probate Judge and Trustee Named in Court's Order and Contract.

Registration.

Office of the County Treasurer,
Columbiana, Alabama.

Warrant No. —; Installment, No. —.

STATE OF ALABAMA,
Shelby County:

This warrant and annexed coupon presented for registration and registered by me against the special court house fund allowed to B. C. Bynum Construction Company, contractors, on account of the

contract for building the Court House of Shelby County, dated
56 the 25th day of July, 1905. Witness my lithographed fac
simile signature to the annexed coupon and my hand to this
warrant this the — day of ——, 1905.

—— ——,
County Treasurer.

Assignment.

For value received, we hereby sell, assign, transfer, set over and deliver to —— ——, or bearer, all right, title and interest we have in and to the within debt and sum of money due us and also the proportionate part of the County Court

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House contract made between us and Shelby County, Alabama, on the 25th day of July, 1905, represented by the amount of this warrant and the interest due on said amount, as well together also this, the within principal Court House warrant, the interest due thereon, and the annexed interest coupon warrant evidencing it and said assignee is hereby subrogated to all privileges, titles, and rights, whether at law or in equity belonging to said contract, sum of money due and said warrants to the undersigned, who hereby authorizes the said assignee or bearer to collect the same and give in our name full receipt and acquittance thereof. Witness our lithographed facsimile signature assigning the annexed coupon warrants and our hands and seals in assigning this principal warrant on this the — day of ——, 1905.

B. C. BYNUM CONSTRUCTION COMPANY,
By ——— ———,
Contractors and Builders of the County Court-house at Columbiana, Shelby County, Ala.

Be it further ordered by the Court of County Commissioners that said foregoing forms and said warrants shall be printed and lithographed at the expense of the County under the supervision of G. W. L. Smith, who prepared their resolutions and orders of

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Court for the County under its employment of him. That an
57 annual special court house tax of one fourth of one per centum on all of the taxable property in the County of Shelby, State of Alabama, be and the same is hereby levied upon all of the taxable property in said County annually, and from year to year hereafter, which when collected shall be set apart by the County Treasurer and be exclusively applied by him on the payment of all of said warrants principal and interest upon their maturity, and as they may be presented and surrendered to him at this office and until all of said warrants shall be fully paid. And in the event the County

Treasurer shall take extra pains in preparing his register as to show the registration of the foregoing warrants against the Special fund raised for their payment in each year, and shall certify copies of this record thereof, then in that event he shall be compensated by the County in such sums as the Court may deem reasonable and just.

The foregoing minutes read and adopted and approved.

A. P. LONGSHORE,
Probate Judge.
PLEASANT SHAW, *Commissioner.*
J. E. DYKES, "

On motion court adjourned to meet Wednesday, October 11th, at 3 P. M. 1905.

STATE OF ALABAMA,
Shelby County:

I, Oliver Miles, Clerk of the Board of Revenue of Shelby County, Alabama, do hereby certify that the foregoing words and figures are a true and correct copy of the minutes of the Court of County Commissioners of Shelby County, Alabama, as the same appears in Book No. 1 at page 525 to 557, inclusive.

In witness whereof I have hereunto set my hand on this the 12th day of February, 1916.

OLIVER MILES,
Clerk of the Board of Revenue of Shelby County, Alabama.

58 Minutes of Commissioners' Court.

Book No. 1.

Shelby County.

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Court of County Commissioners, Regular Term, October 25th, 1905.

STATE OF ALABAMA,
Shelby County:

At this the regular meeting and term of the Commissioners' Court of Shelby County, State of Alabama, held at the regular meeting place in the Court House of Columbiana, on the 1st Monday in October, 1905, at which regular meeting a quorum was present, composed of the following members, to-wit: A. P. Longshore, Probate Judge, J. E. Dyke and Pleasant Shaw, the following among other proceedings were had:

A resolution being offered in writing, the same was upon motion made and vote taken unanimously adopted by all of the members present, to-wit:

Resolution.

1st. Resolved and ordered by the Court of County Commissioners of Shelby County, Alabama, that the contract heretofore made and entered into by the County of Shelby with the Court House architects, the Bruce Architectu-al Company, the terms of which are set out in the Minutes of the Court of the 23rd day of June, 1905, and subsequently affirmed as shown by the minutes of the Court of the 3rd day of July, 1905, be and said contract is hereby ratified and approved according to its terms, as shown and heretofore set out upon the minutes of this court.

2nd. Resolved and ordered further by the court that the agreement and contract by the County made with B. C. Bynum, doing business under the firm name and style of the B. C. Bynum Construction Company, for the erection of a court house for Shelby County, within the corporate limits of Columbiana, the terms of which are set out and shown upon the minutes of the Court of the 11th day of

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September, 1905, *be* and said contract and the resolution and
59 orders made authorizing the Probate Judge to sign said contract and issue warrants in payment of the contract price, be and the same are all of them hereby confirmed, ratified and approved.

Be it further resolved and ordered by the Court that all of the special resolutions adopted and ordered made on the 11th day of September, 1905, by this Court and shown by the Minutes thereof, employing said B. C. Bynum Construction Company of Montgomery, Alabama, to furnish the material and labor and build the Shelby County Court House at Columbiana, Alabama, for the sum and contract price of Seventy one thousand, eight hundred and ninety (71,890.00) Dollars, to be paid by the County of Shelby in twenty annual installments, which installments fall due and are payable February 1st, of each year for twenty years, beginning February 1st, 1907 and ending February 1st, 1926, both inclusive, and which contract price draws or bears interest from January 1st, 1906 at the rate of six and one half per centum (6½%) per annum payable annually hereafter until all of said contract price and said annual installments composing it shall be fully paid. That said contract price, the said installments composing it and the interest thereon shall be all represented by Shelby County, Alabama, principal Court House warrants, and shall have annexed to them coupon warrants evidencing the interest due on said warrants and the Court House debt due the contractors and when so represented, said principal warrants shall have the subdivision, and the numbers, maturities and amounts as shown in the orders and resolutions of the Court made September 11, 1905, fixing the forms of

(1) The contractors' application.

(2) The form of the architect's certificate.

(3) The form of the Court's order of allowance and the forms of the Court House warrants and interest coupons.

That the orders made on said date, all of them, including those levying a special County Court House tax annually, or from year to year hereafter, of ¼ of 1%, or so much thereof as may be necessary to meet and pay off

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the installments of principal and interest of said Court House debt and the resolution adopted, employing G. W. L. Smith, Att'y of Brewton, Alabama, and the same are hereby reaffirmed, re-
60 adopted, remade, confirmed, fully ratified in all respects and approved.

Foregoing Minutes read and approved.

A. P. LONGSHORE,
Judge of Probate.
PLEASANT SHAW,
J. E. DYKES,
Commissioners.

On motion of John E. Dykes seconded by R. B. Posey it was ordered that the Court House be built — Grey Brick.

STATE OF ALABAMA,
Shelby County:

I, Oliver Miles, Clerk of the Board of Revenue of Shelby County, Alabama, do hereby certify that the foregoing words and figures are a true and correct copy of the minutes of the Commissioners Court of Shelby County, Alabama, as the same appears in Book No. 1, at page- 560, 561, and 562, inclusive.

In witness whereof I have hereunto set my hand on this the 12th day of February, 1916.

OLIVER MILES,
Clerk of the Board of Revenue of Shelby County, Alabama.

Allowed Claims.

By Court of County Commissioners of Shelby County pursuant to architect's certificates to court house contractor, under contract approved September 11, 1905, for interest bearing court house warrants in the principal sum of $71,890.00, as follows:

October	31, 1905.	Claim No. 1 allowed warrants 1 to 26	$13,000
December	19, 1905.	Claim No. 2 allowed warrants 27 to 44	9,000
March	2, 1906.	Claim No. 3 allowed warrants 46 to 56	5,000
April	5, 1906.	Claim No. 4 Allowed warrants 56 to 65	5,000
June	6, 1906.	Claim No. 5 allowed warrants 66 to 87	11,000
August	1, 1906.	Claim No. 6 allowed warrants 88 to 103	8,000
October	12, 1906.	Claim No. 7 allowed warrants 104 to 121	9,000
December	8, 1906.	Claim No. 8 allowed war's 122 to 136.	7,500

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September	18, 1906.	Claim No. 9 allowed war's 137 to 144.	$4,000
		Total principal	$71,890.

Minutes of the Commissioners' Court Book No. L.

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THE STATE OF ALABAMA,
Shelby County:

Court of County Commissioners, Regular Adjourned Oct. Term, 1905.

Be it known and remembered that on the 31st day of October, a regular adjourned October term, there being present A. P. Longshore, Judge of Probate R. J. Griffin, R. B. Posey, Pleasant Shaw and John E. Dykes, Commissioners, the following proceedings were had and orders made:

Contractors' Application Claim No. 1.

THE STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., October 31, 1905.

Hon. Court of County Commissioners of Shelby County and Hon. A. P. Longshore, Trustee.

GENTLEMEN: Please examine my claim against Shelby County, Alabama, for the sum of $13,108.44 dollars and — cents due this day for work done, labor performed, and material actually furnished the county in and about the building of the County Court House building, as shown by Exhibit "A" hereto attached and made a part of the application which same please pay and oblige,

Respectfully,

B. C. BYNUM CONSTRUCTION COMPANY, *Contractors,*
By B. C. BYNUM.

EXHIBIT "A."

THE STATE OF ALABAMA,
Shelby County:

I, A. P. Longshore, Judge of Probate in and for said County hereby certify that before me this day personally appeared B. C. Bynum in behalf of B. C. Bynum Construction Company, contractors, and who being by me first duly sworn, deposes and says; that he has personal knowledge of the facts herein stated for and in behalf of B. C. Bynum Construction Company, Contractors and Builders of the County Court House of Shelby County, Alabama, and that said contractors have performed the work and labor and furnished the material to the amount and value below

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stated in behalf and about the building of the Court House under

their contract with the County of Shelby, which amount and sum has been earned and represents a part of the contract price for erecting the entire building as follows, to-wit:

Items Composing this Claim.

13,896 Cubic feet of concrete at 74c	$10,283.04
200 lbs. of cement on ground at 3.28 per	656.00
250 M. brick on ground at 8.00 per M.	2,000.00
280 yards of sand at 1.50 per yard	420.00
100 " " gravel at 2.00 per yard	200.00
Excavation	685.00
	14,244.04
Less 15% retained	2,113.56
	12,108.44
Labor and additional material	1,000.00
Total due in cash for this claim	$13,108.44

B. C. BYNUM CONSTRUCTION COMPANY,
By B. C. BYNUM,
Who Has Personal Knowledge of the Facts Sworn To.

Principal warrant	$13,000.00
Interest Coupon Warrant	3,592.70
Total due in warrants for this claim	$16,592.70

Sworn and subscribed to before me this the 31st day of October, 1905.

A. P. LONGSHORE,
Probate Judge of Shelby County.

Architects' Certificate No. 1.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., 31st Day of October, 1905.

63 Hon. A. P. Longshore, Trustee, and Hon. Court of County Commissioners of Shelby County, Alabama.

GENTLEMEN: We, the Bruce Architectu-al Company, heretofore duly appointed architects and superintendents of the building and erection of the Court House at Columbiana, for Shelby County, Alabama, within the corporate limits of said town, hereby certify that we have carefully inspected all of the material furnished for and work done on said court House up to *the* time. We further certify that the work done and material furnished as shown by the above and

foregoing itemized bill of account marked Exhibit "A" rendered to us by B. C. Bynum Construction Company, Contractors and Builders of said Court House, has been furnished, done and supplied to the County in a satisfactory and workmanlike manner and to our satisfaction, the same being in conformity with the plans and specifications called for by the County's contract. We further certify that said County has actually received the work and labor done and material furnished by said contractors under their contract with the County to the amount of $13,108.44 dollars and — cents, as shown by Exhibit "A" and that said contractors have a just claim against the County in the full, true and correct sum therein mentioned, which sum represents the proportionate amount of the contract price earned by said contractors, we having personally examined into the correctness and justness of said claim, and know the same to be now due and payable. We further certify that said contractors are now entitled to receive from the trustee provided for in the contract of the County, and from your honorable body, so many of the certificates of indebtedness and warrants of the County as may be sufficient to pay said sum earned herein above certified.

Respectfully yours,

F. A. CHURCH,
A Competent Substitute Appointed by the Court Instead of the Bruce Architectural Company, Architects and Superintendents of the Shelby County Court-house Building.

Court-house Allowance of Claim No. 1.

The foregoing application and claim No. 1 of B. C. Bynum Construction Company, contractors and builders of the County
64 Court House for said County, on a site within the corporate limits of the City of Columbiana, designated by the Court of County Commissioners, was presented by them for allowance for work and labor done and material furnished the County under their contract with the County, amounting to $13,108.44 dollars and No — cents. Whereupon, the Court proceeded to examine said claim and finding the same to be — preferred claim against the County of Shelby, that the same was duly itemized and sworn to, as required by law, and that said claim was accompanied by a proper certificate of the County Architects in supervision of the erection of said building, to the effect that the County had actually received the benefit of said amount under its contract, and that the work and material were satisfactory. Thereupon the Court, further and fully

advised in the premises, and upon finding that the County had received the benefit claimed to the amount of said sum, and as shown by said contractors' claim. It is, therefore, ordered that said claim be received, accepted, approved audited and registered and allowed in full. That the Trustee or Probate Judge, A. P. Longshore, de-

liver to said contractors, principal (interest bearing) Court House Warrants and certificates numbered from one to 26, inclusive, for the sum of $13,000.00, which principal warrants shall draw interest from January 1st, 1906 at the rate of 6½% payable annually, and have annexed to them coupon warrants sufficient to represent and pay for the interest accruing on said principal warrants and on so much of the contract price earned and represented by said principal warrants and sufficient to cover the contractors' claim, and that all of said warrants be duly signed and sealed in behalf of the County and countersigned by the County Clerk, as of the 25th day of July, 1905, the same date as contract, and that he deliver the same to said contractors as per contract, in payment of their claim No. 1 which claim represents a part of the debt and contract price now earned by the contractors under their contract with the county, dated the 25th day of July, 1905, and confirmed September 11, 1905, and which the County is now justly due them, provided that said coupon
65 warrants shall not be sealed, but shall be signed by the lithographed facsimile signature of the Probate Judge.

STATE OF ALABAMA,
Shelby County:

I, A. P. Longshore, Probate Judge in and for said State and County, do hereby certify that the foregoing words and figures consisting of the contractors' Claim No. 1 Architects' Certificate No. 1 and the Court's Allowance No. 1 compose a true and correct copy and transcript of the record of the minutes of the commissioners' court of said county, as the same appears in Minute Record 2 page — in my office.

Witness my hand and official seal this the 31st day of October, 1905, and on motion the Court adjourned until the 18th day of Dec. 1905.

A. P. LONGSHORE,
Probate Judge.

J. E. DYKES.

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Minutes of Commissioners' Court Book 1.

STATE OF ALABAMA,
Shelby County:

Court of County Commissioners, Regular Adjourned Oct. Term, 1905.

At this a regular adjourned October Term 1905 of the Court of County Commissioners of Shelby County, State of Alabama, held on the 31st day of October, 1905, at its regular meeting place in the

Court House, in the City of Columbiana, at which regular meeting a quorum was present, consisting of the following members, to-wit: A. P. Longshore, Probate Judge, and Commissioners R. B. Posey, R. J. Griffin, J. E. Dykes and Pleasant Shaw, the following among other proceedings were had:

Contractors' Application Claim No. 2.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALABAMA, 19th Day of Dec., 1905.

Honorable Court of County Commissioners of Shelby County; Bruce Architectural Company, Architect; Hon. A. P. Longshore, Trustee.

GENTLEMEN: Please examine my claim against Shelby County, Alabama, for the sum of $9005.00 and no cents, due us this day for work done, labor performed and material actually furnished the County in and about the building of the County Court House Building as shown by Exhibit "A" hereto attached, and made a part of the application, which sum please pay and oblige.

Yours respectfully,

B. C. BYNUM CONSTRUCTION CO.,
Contractors.

By B. C. BYNUM.

EXHIBIT "A."

STATE OF ALABAMA,
Shelby County:

I, A. P. Longshore, Probate Judge in and for said State and County hereby certify that before me this day personally appeared —— —— in behalf of B. C. Bynum Construction Company, contractors, and who being by me first duly sworn, deposes and says that he has personal knowledge of the facts herein stated for and in behalf of B. C. Bynum Construction Company, contractors and builders of the County Court House of Shelby County, Alabama, and that said contractors have performed the work and labor and furnished the material to the amount and value below stated, in and about the building of the Court House under their contract with the County of Shelby, which amount and sum has been earned and represents a part of the contract price for erecting the entire building as follows, to-wit:

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To Items Composing this Claim:

4700	Cubic feet concrete at 74c	$3,478.00
250	M. Brick $8.00	2,000.00
15928	Cb. ft. earth fill 7c	1,115.00
100	Brick in wall $15. per	1,500.00
5	cars of marble	2,500.00
		10,593.00
	Less 15% retained	1,588.00
		9,005.00
67	Less amount heretofore received in contract ...	.....
	Total due in cash for this Claim	.....
	Principal warrants	$9,000.00
	Interest coupon warrants	4,712.50
	Total due in warrants for this claim	$13,712.50

B. C. BYNUM CONSTRUCTION CO.,
By B. C. BYNUM,
Who Has Personal Knowledge of the Facts Above Sworn To.

Sworn to and subscribed to before me, this the 19th day of December, 1905.

[SEAL.] A. P. LONGSHORE,
Probate Judge Shelby Co., Ala.

Architects' Certificate No. 2.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALABAMA, 19th Day of December, 1905.

Hon. A. P. Longshore, Trustee, and Hon. Court of County Commissioners of Shelby County, Alabama.

GENTLEMEN: We, the Bruce Architectu-al Company, heretofore duly appointed architects and superintendents of the building and erection of the Court House at Columbiana, for Shelby County, Alabama, within the corporate limits of said town, hereby certify that we have carefully inspected all of the material furnished for the work done on said Court House up to this time. We further certify that the work done and material furnished as shown by the above and foregoing itemized sworn bill of account marked Exhibit "A," rendered to us by B. C. Bynum Construction Company, contractors and builders of said Court House has been furnished, done and supplied

to the County in a satisfactory and workmanlike manner and to our satisfaction, the same being in conformity with the

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plans and specifications called for by the County's contract. We further certify that said county has actually received the work and labor done and material furnished by said contractors under their contract with the County to the amount of $9000.00 and 00 cents, as shown by Exhibit "A" and that said contractors have a
68 just claim against the County in the full, true and correct sum therein mentioned which sum represents the proportionate amount of the contract price earned by said contractors, we having personally examined into the correctness and justness of said claim and know the same to be now due and payable. We further certify that said contractors are now entitled to receive from the trustee provided for in the contract of the County, and from your honorable body, as many of the certificates of indebtedness and warrants of the County as may be sufficient to pay said sum earned herein above certified.

Respectfully yours,

THE BRUCE ARCHITECTU-AL CO.
F. A. CHURCH,
As Competent Substitute Appointed in the Place of Bruce Architectu-al Company, Temporarily Architects and Superintendents of the Shelby County Court-house Building.

Court's Allowance of Claim No. 2.

The foregoing application and claim No. 2 of B. C. Bynum Construction Company, contractors and builders of the County Court House for said County, on a site within the corporate limits of the city of Columbiana, designated by the Court of County Commissioners, was presented by them for allowance for work and labor done and material furnished the County under their contract with the County, amounting to 9005 dollars and no cents. Whereupon the Court proceeded to examine said claim and finding the same to be a preferred claim against the County of Shelby, that the same was duly itemized and sworn to, as required by law, and that said claim was accompanied by a proper certificate of the County Architect in supervision of the erection of said building, to the effect that the County has actually received the benefit of said amount under its contract, and that the work and material were satisfactory. Thereupon the Court being further and fully advised in the premises, and upon finding that the County has received the benefit claimed to the amount of said sum as shown by said con-
69 tractors' claim. It is therefore, ordered that said claim be received, accepted, approved, audited, registered, and allowed in full, that the Trustee or Probate Judge, A. P. Longshore, deliver to said contractor, principal (interest bearing) Court House war-

rants and certificates numbered from 27 to 44 inclusive, for the sum of $9000, which principal warrants

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shall draw interest from January 1st, 1906, at the rate of 6½ per cent payable annually, and have annexed to them coupon warrants sufficient to represent and pay the interest accruing on said principal warrants, and on so much of the contract price earned and represented by said principal warrants, and sufficient to cover the contractors' claim, and that all of said warrants be duly signed and sealed in behalf of the County by A. P. Longshore, as Probate Judge, of the County and countersigned by the County Clerk, as of the 21st day of July, 1905, the same date as contract, and that he deliver the same to said contractors as per contract in payment of their claim No. 2, which claim represents a part of the debt and contract price now earned by the contractors under their contract with the County, dated the 25th day of July, 1905, and confirmed September 11th, 1905, and which the County is now justly due them, provided that said coupon warrants shall not be sealed, but shall be signed by the lithographed fac-simile signature of the Probate Judge.

STATE OF ALABAMA,
Shelby County:

Office of Probate Judge.

I, A. P. Longshore, Probate Judge, in and for said State and County, do hereby certify that the foregoing words and figures, consisting of the contractors' claim No. 2, Architect's certificate No. 2, and the Court's allowance No. 2, compose a true and correct copy and transcript of the record of the minutes of the Commissioners' Court of said county, as the same appears in Minute Record 1 page — in my office.

Witness my hand and official seal this the 19th day of Dec., 1905.

[OFFICIAL SEAL.] A. P. LONGSHORE,
Probate Judge.

70 *Minutes of the Commissioners' Court.*

Book 2.

Page 1.

Be it known and remembered that on the 28th day of Feb'y 1906, a special term of the Commissioners' Court was called as required by law. There being present A. P. Longshore, Judge of Probate, Pleasant Shaw, J. E. Dykes, R. J. Griffin, R. B. Posey, Commissioners, when the following proceedings were had and orders made, to-wit:

STATE OF ALABAMA,
Shelby County:

Court of County Commissioners.

Regular adjourned term of the Court of County Commissioners of Shelby County, State of Alabama, held on the — day of ——, 190- at its regular meeting place in the Court House in the City of Columbiana, at which regular meeting a quorum was present, consisting of the following members, to-wit: A. P. Longshore, Probate Judge, and Commissioners R. B. Posey, R. J. Griffin, J. E. Dykes, and Pleasant Shaw, the following among other proceedings were had:

Contractors' Application Claim No. 3.

STATE OF ALABAMA,
Shelby County:

Honorable Court of County Commissioners of Shelby County; Frederick Ausfield, Architect; Hon. A. P. Longshore, Trustee.

GENTLEMEN: Please examine my claim against Shelby County, Alabama, for the sum of — Dollars and & — cents, due on this day for work done, labor performed and material actually furnished the County in and about the building of the County Court House building, as shown by Exhibit "A" hereto attached and made a part of this application, which sum please pay and oblige.

Yours respectfully,

B. C. BYNUM CONSTRUCTION CO.,
By B. C. BYNUM.

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Contractors.

71 EXHIBIT "A."

STATE OF ALABAMA,
Shelby County:

I, A. P. Longshore, Probate Judge, in and for said State and County hereby certify that before me on this day personally appeared B. C. Bynum, in behalf of B. C. Bynum Construction Company, contractors, and who being by me first duly sworn deposes and says that he has personal knowledge of the facts herein stated for and in behalf of B. C. Bynum Construction Company, contractors and builders of the County Court House of Shelby County, Alabama, and that said contractors have performed the work and labor and furnished the material to the amount and value below stated, in and about the building of the Court House under their contract with the County of Shelby, which amount and sum have been earned and represents a part of the contract price for erecting the entire building as follows, to-wit:

To Items Composing this Claim:

Excavations for basement and footings	$2,392.00
Filling and back filling	2,200.00
Concrete Work	11,820.00
192,000 brick in wall	3,264.00
Marble in wall	5,800.00
Marble on ground and cut	1,580.00
35,000 bricks on ground	2,800.00
Morter and lime	400.00
Cement on ground	650.00
Frames on ground and set	340.00
	$31,246.00

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Less 15% retained	4,686.90
	$26,559.00
Principal warrants $.....	
Interest coupon warrants $.....	
Less amount heretofore received on contract	$2,700.00
Total due in cash for this claim	$5,559.10

B. C. BYNUM CONSTRUCTION CO.,
By C. B. BYNUM,
Who Has Personal Knowledge of the Facts Above Sworn to.

Sworn and subscribed to before me this, the — day of ——, 19—.
[SEAL.] —— ——.

72 *Architect's Certificate No. 3.*

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., 2nd Day of March, 1906.

Hon. A. P. Longshore, Trustee, and Hon. Court of County Commissioners of Shelby County, Alabama.

GENTLEMEN: I, Frederick Austfield, heretofore duly appointed Architects and superintendents of the building and erection of the Court House at Columbiana for Shelby County, Alabama, within the corporate limits of said town, hereby certify that we have carefully inspected all of the material furnished for the work done on said Court House up to this time. We further certify that the work done and material furnished, as shown by the above and foregoing

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itemized sworn bill of account, marked Exhibit "A" rendered to us by B. C. Bynum Construction Company, contractors and builders of said Court House has been furnished, done and supplied to the County in a satisfactory and workmanlike manner and to our satisfaction, the same being in conformity with the plans and specifications called for by the County's contract. We further certify that said County has actually received the work and labor done and material furnished by said contractors under their contract with the county to the amount of 5,559 dollars and ten cents, as shown by Exhibit "A" and that said contractors have a just claim against the County in the full, true and correct sum therein mentioned, which sum represents the proportionate amount of the contract price earned by said contractors, we having personally examined into the correctness and justness of said claim and know the same to be now due and payable. We further certify that said contractors are now entitled to receive from the trustees provided for in the contract of the County, and from your Honorable body, as many of the certificates of indebtedness and warrants of the County as may be sufficient to pay said sum earned hereinabove certified.

Respectfully yours,

FREDERICK AUSFIELD,
Architect, Montgomery, Alabama.

——— ———,
——— ———,
73 *Architects and Superintendents of the*
Shelby County Court House Building.

Court's Allowance of Court's *Claim No.* 3.

The foregoing application and claim No. — of B. C. Bynum Construction Company, contractors and builders of the County Court

Page 5.

House for said County, on a site within the corporate limits of the City of Columbiana, designated by the Court of County Commissioners, was presented by them for allowance for work and labor done and material furnished the County under their contract with the County, amounting to 5550 dollars and — cents. Whereupon the Court proceeded to examine said claim, and finding the same to be a preferred claim against the County of Shelby, that the same was duly itemized and sworn to, as required by law, and that said claim was accompanied by a proper certificate of the County Architects in supervision of the erection of said building, to the effect that the County had actually received the benefit of said amount under its contract and that the work and material were satisfactory. Thereupon the Court being further and fully advised in the premises and upon finding that the County had received the benefit claimed to the amount of said sum, and as shown by said contractor's claim. It is therefore

ordered that said claim be received, accepted, approved, audited, registered and allowed in full. That the trustee or probate Judge, A. P. Longshore, deliver to said contractors principal (interest bearing) Court House warrants and certificates numbered from — to — inclusive, for the sum of — Dollars and — cents, which principal warrants shall draw interest from January 1st, 1906, at the rate of 6½ per cent payable annually, and have annexed to them coupon warrants sufficient to represent and pay for the interest accruing on said principal warrants and on so much of the contract price earned and represented by said principal

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warrants, and sufficient to cover the contractors' claim and that all of said warrants be duly signed and sealed in behalf of the
74 County by A. P. Longshore, as Probate Judge of the County, and countersigned by the County Clerk as of the 25th day of July, 1905, the same date as contract and that he deliver the same to said contractors as per contract in payment of their claim No. — which claim represents a part of the debt and contract price now earned by the contractors under their contract with the County dated the 23rd day of July, 1905, and confirmed September 11th, 1905, and which the County is now justly due them, provided the said coupon warrants shall not be sealed, but shall be signed by the lithographed fac-simile signature of the Probate Judge.

STATE OF ALABAMA,
Shelby County:

I, A. P. Longshore, Probate Judge in and for Shelby County, Alabama, do hereby certify that the foregoing words and figures, consisting of the contractors' claim No. 1, Architect's Certificate No. — and the Court's allowance No. — compose a true and correct copy and transcript of the record of the Minutes of the Commissioners' Court of said County as the same appears in Minutes Record 2, page 1 in my office.

Witness my hand and official seal this the — day of ——, 1906.

——— ———,
Probate Judge.

Minutes of the Commissioners' Court of Shelby County, Alabama.

Book 2.

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STATE OF ALABAMA,
Shelby County:

Court of County Commissioners, Regular Adjourned Term, 1906.

At this a regular adjourned term, 190–, of the Court of County Commissioners of Shelby County, State of Alabama, held on the —

day of ——, 19—, at its regular meeting place in the Court House, in the city of Columbiana, at which regular meeting a quorum was present consisting of the following members, to-wit: A. P. Longshore, Judge of Probate, and Commissioners R. B. Posey, R. J. Griffin, J. E. Dykes, and Pleasant Shaw, the following among other proceedings were had.

75 Page 12.

Contractor's Application No. 4.

STATE OF ALABAMA, *Shelby County:*

COLUMBIANA, ALA., 5th Day of April, 1906.

Honorable Court of County Commissioners of Shelby County, Frederick Austfield, Architect; Hon. A. P. Longshore, Trustee.

GENTLEMEN: Please examine my claim against Shelby County, Alabama, for the sum of — Dollars and — cents, due us this day for work done and labor performed and material actually furnished the County in and about the building of the County Court House building as shown by Exhibit "A" hereto attached and made a part of this application, which sum please pay, and oblige.

Yours respectfully,

—— ——, *Contractor,*

By —— ——.

STATE OF ALABAMA, *Shelby County:*

I, A. P. Longshore, Probate Judge in and for said State and County, hereby certify that before me this day personally appeared —— ——, in behalf of B. C. Bynum Construction Company, contractors, and who being by me first duly sworn, deposes and says that he has personal knowledge of the facts herein stated for, and in behalf of B. C. Bynum Construction Company, contractors and builders of the County Court House of Shelby County, Alabama, and that said contractors have performed the work and labor and furnished the material to the amount and value below stated, in and about the building of the Court House under their contract with the County of Shelby, which amount and sum has been earned and represents a part of the contract price for erecting the entire building, to-wit:

76	For marble in walls and on ground	$3,800.00
	For brick	1,000.00
For lime and sand		400.00
" frames and castings		500.00
Concrete *lieuths* and wall anchors		188.80
Amount received on former estimate		32,352.90
		$38,241.70
Less 15% retained		5,741.70
		$32,500.00
Less amount heretofore received on contract		27,500.00
Total due in cash for this claim		$5,000.00

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Principal warrants	$.....
Interest coupon warrants	.....
Total due in warrants for this claim	.....

B. C. BYNUM CONSTRUCTION CO.,
By —— ——,
Who Has Personal Knowledge of the Facts Above Sworn to.

Sworn and subscribed to before me this the 5th day of April, 1906.
A. P. LONGSHORE,
Probate Judge.

Architect's Certificate No. 4.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., 5th Day of April, 1906.

Hon. A. P. Longshore, Trustee, and Hon. Court of County Commissioners of Shelby County, Alabama:

I, Frederick Ausfield, heretofore duly appointed architect and superintendent of the building and erection of the Court House at Columbiana, for Shelby County, Alabama, within the corporate limits of said town, hereby certify that we have carefully inspected all of the material furnished for and work done on said Court House up to this time. We further certify that the work done and material furnished, as shown by the above and foregoing itemized sworn bill of account marked Exhibit "A" rendered to us by B. C. Bynum Construction Company, contractors and builders of said Court House, has been furnished, done and supplied to the County in a satisfactory and workmanlike manner and to our satisfaction, the same being
77 in conformity with the plans and specifications called for by

the County contract. We further certify that said County has actually received the work and labor done and material furnished by said contractors under their contract with the county, to the amount of Five thousand dollars and no cents, as shown by Exhibit "A," and that said contractors have a just claim against the County in the full, true and correct sum therein mentioned, which sum represents the proportionate amount

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of the contract price earned by said contractors, we having personally examined into the correctness and justness of said claim, and know the same to be now due and payable. We further certify that said contractors are now entitled to receive from the trustee provided for in the contract of the County, and from your honorable body, as many of the certificates of indebtedness and warrants of the County, as may be sufficient to pay said sum earned hereinabove certified.

Respectfully yours,

FREDERICK AUSFIELD,
Architect and Superintendent of the Shelby County Court-house Building.

Court's Allowance of Claim No. 4.

The foregoing application and claim No. 4 of B. C. Bynum Construction Company, contractors and builders of the County Court House for said County, on a site within the corporate limits of the City of Columbiana, designated by the Court of County Commissioners was presented by them for allowance for work and labor done and material furnished the County under their contract with the County, amounting to $5,888 *dollars* and 80 cents. Whereupon the Court proceeded to examine said claim, and finding the same to be a preferred claim against the County of Shelby, that the same was truly itemized and sworn to, as required by law, and that said claim was accompanied by a proper certificate of the County Architect, in supervision of the erection of said building, to the effect that the County had actually received the benefit of said amount under its contract, and that the work and material were satisfactory.

78 Thereupon the Court being further and fully advised in the premises, and upon finding the County has received the benefit claimed to the amount of said sum, and as shown by said contractors' claim. It is therefore ordered that said claim be received, accepted, approved

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audited, registered and allowed in full. That the trustee or Probate Judge, A. P. Longshore, deliver to said contractors principal (interest bearing) Court House warrants and certificates numbered from 56 to 65, inclusive, for the sum of $5,000.00, which principal warrants shall draw interest from January 1st, 1906, at the rate of 6½ per cent, payable annually and have annexed to them coupon warrants

sufficient to represent and pay for the interest accruing on said principal warrants and on so much of the contract price earned and represented by said principal warrants, and sufficient to cover the contractors' claim, and that all of said warrants be duly signed and sealed in behalf of the County by A. P. Longshore, as Probate Judge of the County, and countersigned by the County Clerk, as of the 25th day of July, 1905, the same date as contract, and that he deliver the same to said contractors as per contract in payment of their claim No. 4 which claim represents a part of the debt and contract price now earned by the contractors under their contract with the County, dated the 25th day of July, 1905, and confirmed September 11th, 1905, and which the County is now justly due them provided that said coupon warrants shall not be sealed, but shall be signed by the lithographed fac-simile signature of the Probate Judge.

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STATE OF ALABAMA,
Shelby County:

Office of Probate Judge.

I, A. P. Longshore, Probate Judge, in and for said State and County, hereby certify that the foregoing words and figures consisting of the contractors' claim No. 4, Architect's Certificate No. 4, and the Court's allowance No. 4 compose a true and correct copy and transcript of the record of the Commissioners' Court of said County, as the same appears in Minute record 2, page 11 in my office.

79 Witness my hand and official seal, this the 5th day of April, 1906.

[SEAL.] A. P. LONGSHORE,
Probate Judge.

Minutes of Commissioners' Court, Book No. 2, Page 23.

STATE OF ALABAMA,
Shelby County:

Regular Adjourned April Term, 1906.

At this, a regular adjourned April term, 1906, of the Court of County Commissioners of Shelby County, Alabama, held on the 6th day of June, 1906, at its regular meeting place in the Court House in the City of Columbiana, at which regular meeting a quorum was present consisting of the following members, to-wit: A. P. Longshore, Probate Judge, and Commissioners, R. B. Posey, R. J. Griffin, J. E. Dykes, and Pleasant Shaw, the following among other proceedings were had:

Contractors' Application, Claim No. 5.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., 6th Day of June, 1906.

Honorable Court of County Commissioners of Shelby County; Frederick Ausfield, Hon. A. P. Longshore, Trustee.

GENTLEMEN: Please examine my claim against Shelby County, Alabama, for the sum of $11,072 *dollars* and 45 cents, due us this day for work done, labor performed, and material furnished the County in and about the building of the County Court House building, as shown by Exhibit "A" hereto attached, and made a part of this application, which sum please pay and oblige,

Yours respectfully,

B. C. BYNUM CONSTRUCTION CO.,
Contractors,

By B. C. BYNUM.

80 EXHIBIT "A."

STATE OF ALABAMA,
Shelby County:

I, A. P. Longshore, Probate Judge in and for said State and County hereby certify that before me this day personally appeared B. C. Bynum in behalf of B. C. Bynum Construction Company, contractors, and who being by me first duly sworn, deposes and says that he has personal knowledge of the facts herein stated for and in behalf of B. C. Bynum Construction Company, contractors,

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and builders of the County Court House of Shelby County, Alabama, and that said contractors have performed the work and labor and furnished the material to the amount and value below stated, in and about the building of the Court House under their contract with the County of Shelby, which amount and sum have been earned and represent a part of the contract price for erecting the entire building, as follows, to-wit:

To items composing the claim:

Marble in wall and on ground	$5,800.00
Brick in wall	1,080.00
Mortar and sand	450.00
Fire proofing	2,600.00
Galv. iron	490.00
Roofing material	1,200.00
Bedford stones	1,400.00
Amount received in former estimates	38,241.70
	$51,261.70
Less 15% retained	7,689.25
	43,572.45
Less amount heretofore received on contract	32,500.00
Total due in cash for this claim	$11,072.45
Principal warrants	$11,000.00
Interest coupon warrants	9,329.50
Total due in warrants for this claim	$20,392.50

B. C. BYNUM CONSTRUCTION CO.,
By B. C. BYNUM,
Who Has Personal Knowledge of the Facts Above Sworn to.

Sworn to and subscribed to before me this the 1st day of June, 1906.

81

[SEAL.] A. P. LONGSHORE,
Judge of Probate.

Architect's Certificate No. 5.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., First Day of June, 1906.

Hon. A. P. Longshore, Trustee, and Hon. Court of County Commissioners of Shelby County, Alabama.

GENTLEMEN: I, Frederick Ausfield, heretofore duly appointed architect and superintendent of the building and erection of the Court House at Columbiana, Shelby County, Alabama, within the corporate limits of said town, hereby certify that we have carefully inspected all of the material furnished for and work done on said Court House up to this time. We further certify that the work

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done and material furnished, as shown by the above and foregoing itemized sworn bill of account, marked Exhibit "A" rendered to us

by B. C. Bynum Construction Company, contractors and builders of said Court House, has been furnished, done and supplied to the County in a satisfactory and workmanlike manner and to our satisfaction, the same being in conformity with the plans and specifications called for by the County's contract. We further certify that said County has actually received the work and labor done and material furnished by said contractors under their contract with the County to the amount of Eleven thousand and seventy two dollars and forty-five cents, as shown by Exhibit "A," and that said contractors have a just claim against the County in the full, true and correct sum therein mentioned, which sum represents the proportionate amount of the contract price earned by said contractors, we having personally examined into the correctness and justness of said claim, and we know the same to be now due and payable.

92 We further certify that said contractors are now entitled to receive from the trustee provided for in the contract of the County, and from your honorable body, so many of the certificates of indebtedness and warrants of the County, as may be sufficient to pay said sum earned herein above certified.

Respectfully yours,

FREDERICK AUSFIELD,
Architect and Superintendent of the
Shelby County Court-house Building.

Court's Allowance of Claim No. 5.

The foregoing application and claim No. 5, of B. C. Bynum Construction Company, contractors and builders of the County Court House for said County, on a site within the corporate limits of the City of Columbiana, designated by the Court of County Commissioners was presented by them for allowance for work and labor done and material furnished the County under their contract with the County, amounting to $11,072.45 dollars and forty-five cents. Whereupon the

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Court proceeded to examine said claim and finding the same to be a preferred claim against the County of Shelby, that the same was duly itemized and sworn to, as required by law, and that said claim was accompanied by a proper certificate of the County Architects in supervision of the erection of said building, to the effect that the County had actually received the benefit of said amount under its contract, and that work and material were satisfactory.

Thereupon the Court, being further and fully advised in the premises and upon finding that the County has received the benefit claimed to the amount of said sum, and as shown by said contractors' claim. It is, therefore, ordered that said claim be received, accepted, approved, audited, registered, and allowed in full. That the Trustee or Probate Judge, A. P. Longshore, deliver to said contractors, principal interest bearing Court House warrants and certificates

numbered from 66 to 87 inclusive, for the sum of Eleven
83 thousand dollars, which principal warrants shall draw interest from January 1st, 1906 at the rate of 6½ per cent payable annually, and have annexed to them coupon warrants sufficient to represent and pay for the interest accruing on said principal warrants and on so much of the contract price earned and represented by said principal warrants, and sufficient to cover the contractors' claim, and that all of said warrants be duly signed and sealed in behalf of the County by A. P. Longshore, as Probate Judge of the County, and countersigned by the County Clerk, as of the 25th day of July, 1905, the same date as contract, and that he deliver the same to said contractors as per contract in payment of their claim No. 5, which claim represents a part of the debt and contract price now earned by the contractors under their contract with the County, dated the 25th day of July, 1905, and confirmed September 11th, 1905, and which the County is now justly due them, provided that said coupon warrants shall not be sealed, but shall be signed by the lithographed fac-simile signature of the Probate Judge.

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STATE OF ALABAMA,
Shelby County:

I, A. P. Longshore, Probate Judge, in and for said State and County, do hereby certify that the foregoing words and figures, consisting of the contractors' claim No. 5, architect's certificate No. 5, and the Court's allowance No. 5 compose a true and correct copy and transcript of the record of the minutes of the Commissioners' Court of said County, as the same appears in Minute Record 2, page 22 in my office.

Witness my hand and official seal, this the 6th day of June, 1906.

[OFFICIAL SEAL.] A. P. LONGSHORE,
Probate Judge.

84 *Minutes of Commissioners' Court, Book No. 2, Page* 106.

STATE OF ALABAMA,
Shelby County:

Court of County Commissioners, Regular Adjourned Term, 1906.

At this a regular adjourned Term July 1906, of the Court of County Commissioners of Shelby County, State of Alabama, held on 1st day of August, 1906, at its regular meeting place in the Court House in the City of Columbiana, at which regular meeting a quorum was present consisting of the following members, to-wit: A. P. Longshore, Probate Judge, and Commissioners, R. B. Posey, R. J. Griffin, J. E. Dykes and Pleasant Shaw, the following among other proceedings were had.

Contractors' Application No. 6.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., 1st Day of August, 1906.

Honorable Court of County Commissioners of Shelby County; Frederick Ausfield, Architect, and Hon. A. P. Longshore, Trustee.

GENTLEMEN: Please examine my claim against Shelby County, Alabama, for the sum of $8010 *dollars* and 65 cents due on this day for work done, labor performed and material actually furnished the County in and about the building of the County Court House Building as shown by Exhibit "A" hereto attached and made a part of this application, which sum please pay and oblige,

Yours respt.

B. C. BYNUM CONSTRUCTION CO.,
By B. C. BYNUM.

EXHIBIT "A."

STATE OF ALABAMA,
Shelby County:

I, A. P. Longshore, Probate Judge in and for said County and State, hereby certify that before me this day personally appeared B. C. Bynum in behalf of B. C. Bynum Construction Company, contractors, and who being by me first duly sworn, deposes and says that he has personal knowledge of the facts herein stated for and in behalf of B. C. Bynum Construction Company, contractors,
85 and builders of the County Court House of Shelby County, Alabama, and said contractors here performed the work and labor and furnished the material to the amount and value below stated, in and about the building of the Court House under their contract with the County of Shelby, which amount and sum has been earned and represents a part of the contract price for erecting the entire building, as follows, to-wit:

To Items Composing this Claim:

Marble work and brick work	$3,500.00
Fire Proofing	2,500.00
Bedford stone work	2,500.00
Window frames	200.00
Lumber	750.00
Amounts received on previous estimates	51,261.00
	60,686.00
Less 15% retained	9,102.00
	$51,583.10
Less amount heretofore received on contract	43,572.45
Total due in cash for this claim	$8,010.65

Principal warrants $8,000.00
Interest coupon warrants 7,865.00

Total due in warrants for this claim.....$15,865.00

B. C. BYNUM CONSTRUCTION COMPANY,
By B. C. BYNUM,
Who Has Personal Knowledge of the Facts Above Sworn to.

Sworn to and subscribed to before me this the 1st day of Aug. 1906.
A. P. LONGSHORE,
P. J., Shelby Co.

Architect's Certificate No. 6.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., 1st Day of Aug., 1906.

Hon. A. P. Longshore, Trustee, and Hon. Court of County Commissioners of Shelby County, Alabama.

GENTLEMEN: I, Frederick Ausfield, heretofore duly appointed architect and superintendent of the building and erection of the Court House at Columbiana, for Shelby County, Alabama, within the corporate limits of said town, hereby certify hat we have carefully inspected all of the material furnished for and work done on said Court House up to this time. We further certify that the work

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86 and material furnished, as shown by the above and foregoing itemized sworn bill of account, marked Exhibit "A" rendered to us by B. C. Bynum Construction Company, contractors and builders of said Court House, has been furnished, done and supplied to the County in a satisfactory and workmanlike manner and to our satisfaction, the same being in conformity with the plans and specifications called for by the County architect. We further certify that said County has actually received the work and labor done and material furnished by said contractors under their contract with the County to the amount of Eight thousand and ten dollars and sixty-five cents, as shown by Exhibit "A" and that said contractors have a just claim against the County in the full, true and correct sum therein mentioned, which sum represents the proportionate amount of the contract price earned by said contractors, we having personally examined into the correctness and justness of said claim, and know the same to be now due and payable. We further certify that said contractors are now entitled to receive from the trustee provided for in the contract of the County, and from your honorable body, as many of the certificates of indebtedness and warrants of the

County as may be sufficient to pay said sum earned herein above certified.

Respectfully yours,

FREDERICK AUSFIELD,
Architect and Superintendent of the
Shelby County Court-house Building.

Court's Allowance of Claim No. 6.

The foregoing application and claim No. 6, of B. C. Bynum Construction Company, contractors and builders of the County Court House for said County, on a site within the corporate limits of the City of Columbiana, designated by the Court of County Commissioners, was presented by them for allowance for work and labor done and material furnished the County under their contract with the County amounting to $68,010.00 Dollars and 65 cents. Whereupon the Court proceeded to examine said claim and finding the same to be a preferred claim against the County of Shelby,
87 that the same was duly itemized and sworn to

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as required by law, and that said claim was accompanied by a proper certificate of the County Architect in supervision of the erection of said building, to the effect that the County had actually received the benefit of said amount under its contract, and that the work and material were satisfactory. Thereupon the Court, being further and fully advised in the premises, and upon finding that the County has received the benefit claimed to the amount of said sum, and as shown by said contractor's claim. It is, therefore, ordered that said claim be received, accepted, approved, audited, registered and allowed in full, that the Trustee or Probate Judge, A. P. Longshore, deliver to said contractors, principal (interest bearing) Court House warrants and certificates numbered from 88 to 103, inclusive, for the sum of $8000.00 which principal warrants shall draw interest from January 1st, 1906, at the rate of 6½ per cent payable annually, and have annexed to them coupon warrants sufficient to represent and pay for the interest accruing on said principal warrants and on so much of the contract price earned and represented by said principal warrants and sufficient to cover the contractor's claim, and that all of said warrants be duly signed and sealed in behalf of the County by A. P. Longshore, as Probate Judge of the County, and countersigned by the County Clerk, as of the 25th day of July, 1905, the same date as contract, and that he deliver the same to said contractors as per contract in payment of their claim No. 6, which claim represents a part of the debt and contract price now earned by the contractor under their contract with the County, dated the 25th day of July, 1905, and confirmed September 11th, 1905, and which the County is now justly due

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them provided that said coupon warrants shall not be sealed, but shall be signed by the lithograph fac-simile signature of the Probate Judge.

STATE OF ALABAMA,
Shelby County:

Office of Probate Judge.

88 I, A. P. Longshore, Probate Judge in and for said State and County, do hereby certify that the foregoing words and figures, consisting of the contractor's claim No. 7, Architect's certificate No. 7 and the Court's Allowance No. 7, compose a true and correct copy and transcript of the record and the Minutes of the Commissioners Court of said County, as the same appears in Minute Record 2, page 114 in my office.

Witness my hand and official seal this the 12th day of Oct., 1906

[SEAL.] A. P. LONGSHORE,
Probate Judge.

Minutes of the Commissioners' Court, Book 2, *Page* 123.

STATE OF ALABAMA,
Shelby County:

Court of County Commissioners, Regular Adjourned Oct. Term, 1906.

At this a regular adjourned Oct. Term, 1906, of the Court of County Commissioners of Shelby County, State of Alabama, held on the 8th day of Dec., 1906, at its regular meeting place a quorum was present, consisting of the following members, to-wit: A. P. Longshore, Probate Judge, and Commissioners R. B. Posey, R. J. Griffin, J. E. Dykes, Pleasant Shaw, the following among other proceedings were had:

Contractors' Application, Claim No. 8.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., 8th Day of Dec., 1906.

Honorable Court of County Commissioners of Shelby County; Frederick Austield, Architect; Hon. A. P. Longshore, Trustee:

GENTLEMEN: Please examine my claim against Shelby County, Alabama, for the sum of $7500.00 *dollars* and no cents, due us this day for work done, labor performed and material actually furnished the County in and about the building of the Court House Building, as shown by Exhibit "A" hereto attached and made a part of this application, which sum please pay and oblige,

Yours respectfully,
B. C. BYNUM CONSTRUCTION CO., *Contractors,*
By B. C. BYNUM.

EXHIBIT "A."

STATE OF ALABAMA,
Shelby County:

I, A. P. Longshore, Probate Judge in and for said County and State, hereby certify that before me this day personally appeared B. C. Bynum in behalf of B. C. Bynum Construction Company, Contractors, and who being by me first duly sworn, deposes and says that he has personal knowledge of the facts herein stated ——

88½ I, A. P. Longshore, Probate Judge, in and for said State and County, do hereby certify that the foregoing words and figures consisting of the Contractor's claim No. 6, Architect's Certificate No. 6, and the Court's allowance No. 6, compose a true and correct copy and transcript of the records of the minutes of the Commissioners' Court of said County, as the same appears in Minute record 2, page 106 in my office.

Witness my hand and official seal, this the 1st day of August, 1906.

[SEAL.] A. P. LONGSHORE,
Probate Judge.

Minutes of Commissioners' Court, Book 2, Page 114.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., 12th Day of Oct., 1906.

Honorable Court of County Commissioners of Shelby County; Frederick Ausfield, Architect; Hon. A. P. Longshore, Trustee:

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GENTLEMEN: Please examine my claim against Shelby County, Alabama, for the sum of $9,137 *dollars* and 50 cents, due us this day for work done, labor performed and material actually furnished the County in and about the building of the County Court House building as shown by Exhibit "A" hereto attached and made a part of this application, which sum please pay and oblige,

Yours respectfully,

B. C. BYNUM CONSTRUCTION CO., *Contractors,*
By B. C. BYNUM.

EXHIBIT "A."

STATE OF ALABAMA,
Shelby County:

I, A. P. Longshore, Probate Judge in and for said County and State, hereby certify that before me this day personally appeared B. C. Bynum, in behalf of B. C. Bynum Construction Company, contractors, and who being by me first duly sworn, deposes and says

89 that he has personal knowledge of the facts herein stated for and in behalf of B. C. Bynum Construction Company, contractors and builders of the County Court House of Shelby County, Alabama, and that said contractors have performed the work and labor and furnished the material to the amount and value below stated, in and about the building of the Court House under their contract with County of Shelby, which amount and sum has been earned and represents a part of the contract price for erecting the entire building as follows, to-wit:

To Items Composing this Claim:

Marble cut stone work and brick work	$2,000.00
Roof and carpenter work	3,350.00
Fireproofing	4,000.00
Galv. iron and copper	1,000.00
Plastering and floor strips	400.00
Amounts received on former estimates	60,686.00
	71,436.00
Less 15% retained	10,715.40
	.....
Less amount heretofore received on contract	51,583.10
Total due in cash for this claim	$9,137.50
Principal warrants	$9,000.00
Interest coupon warrants	9,863.60
Total due in warrants for this claim	18,863.60

B. C. BYNUM CONSTRUCTION CO.,
Contractors.

By B. C. BYNUM.
Who Has Personal Knowledge of the Facts Above Sworn to.

Sworn to and subscribed to before me this the 12th day of Oct. 1906.

[SEAL.] A. P. LONGSHORE,
Probate Judge of Shelby County, Ala.

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Architect's Certificate No. 7.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., 12 Day of Oct., 1906.

Hon. A. P. Longshore, Trustee, and Hon. Court of County Commissioners of Shelby County, Alabama.

GENTLEMEN: I, Frederick Ausfield, heretofore duly appointed architect and superintendent of the building and erection of the

Court House at Columbiana, for Shelby County, Alabama,
90 within the corporate limits of said town, hereby certify that we have carefully inspected all of the material furnished for and work done on said Court House up to this time. We further certify that the work done and material furnished as shown by the above and foregoing itemized sworn bill of account marked Exhibit "A" rendered to us by B. C. Bynum Construction Company, contractors and builders of said Court House, has been furnished, done and supplied to the County in a workmanlike and satisfactory manner and to our satisfaction, the same being in conformity with the plans and specifications called for by the County contract. We further certify that said county has actually received the work and labor done and material furnished by said contractors under their contract with the County to the amount of Nine Thousand One Hundred and thirty-seven dollars and fifty cents, as shown by Exhibit "A," and that said contractors have a just claim against the County in the full, true and correct sum therein mentioned, which sum represents the proportionate amount of the contract price earned by said contractors, we having personally examined into the correctness and justness of said claim, and know the same to be due and payable. We further certify that said contractors are now entitled to receive from the Trustee provided for in the contract of the County, and from your honorable body, so many of the certificates of indebtedness and warrants of the County as may be sufficient to pay said sum earned herein above certified.

Respectfully yours,

FREDERICK AUSFIELD,
Architect and Superintendent of Shelby County Court-house Building.

Court's Allowance of Claim No. 7.

The foregoing application and claim No. 7 of B. C. Bynum Construction Company, contractors, and builders of the County Court House for said County, on a site within the corporate limits of the City of Columbiana, designated by the Court of County Commissioners, was presented by them for allowance for work and labor done and material furnished the County under their contract with the County, amounting to 9137 dollars and 50 cents. Whereupon the Court proceeded to examine said claim and finding the same
91 to be a preferred claim against the County of Shelby, that the same was duly itemized and sworn to, as required by law, and that said claim was accompanied by a proper certificate of the County Architects in supervision of the erection of said building, to the effect that the County had actually received the benefits of said amount under its contract, and that the work and material were satisfactory, thereupon the Court being further and fully advised in the premises, and upon finding that the County has received the benefit claimed to the amount of said sum, and as shown by said Contractor's claim. It is, therefore, ordered that said claim be received, accepted, approved, audited and registered and allowed in full. That the Trus-

tee or Probate Judge, A. P. Longshore, deliver to said contractors, principal (interest bearing) Court House warrants and certificates numbered from 104 to 121, inclusive, for the sum of $9000.00, which principal warrants shall draw interest from January 1st, 1906, at the rate of 6½ per cent. payable annually, and have annexed to them coupon warrants sufficient to represent and pay for the interest accruing on said principal warrants and on so much of the contract price earned and represented by said principal warrants and sufficient to cover the contractor's claim, and that all of said warrants be duly signed and sealed in behalf of the County by A. P. Longshore, Judge of the County, and countersigned by the County Clerk, as of the 25th day of July, 1905, the same date as contract, and that he deliver the same to said contractors as per contract in payment of their claim No. 7, which claim represents a part of the debt and contract price now earned by the Contractors under their contract with the County, dated the 25th day of July, 1905, and confirmed September 11th, 1905, and which the County is now justly due them provided that said coupon warrants shall not be sealed, but shall be signed by the lithograph fac-simile signature of the Probate Judge.

STATE OF ALABAMA,
Shelby County:

Office of Probate Judge.

I, A. P. Longshore, Probate Judge in and for said State and County, do hereby certify that the foregoing words and fig-
92 ures consisting of the contractor's claim No. 7, Architect's certificate No. 7 and the Court's Allowance No. 7 compose a true and correct copy and transcript of the record of the Minutes of the Commissioners' Court of said County, as the same appears in Minute Record 2 page 114 in my office.

Witness my hand and official seal this the 12th day of October, 1906.

[SEAL.] A. P. LONGSHORE,
Probate Judge.

Minutes of the Commissioners' Court, Book 2, Page 123.

STATE OF ALABAMA,
Shelby County:

Court of County Commissioners, Regular Adjourned Oct. Term, 1906.

At this regular adjourned Oct. Term, 1906, of the Court of County Commissioners of Shelby County, State of Alabama, held on the 8th day of Dec. 1906, at its regular meeting place in the Court House, in the City of Columbiana, at which regular meeting a quorum was present, consisting of the following members, to-wit: A. P. Longshore, Probate Judge, and Commissioners R. B. Posey, R. J. Grif-

fin. J. E. Dykes, Pleasant Shaw, the following among other proceedings were had:

Contractors' Application, Claim No. 8.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., 8th Day of Dec., 1906.

Honorable Court of County Commissioners of Shelby County; Frederick Ausfield, Architect; Hon. A. P. Longshore, Trustee.

GENTLEMEN: Please examine my claim against Shelby County, Alabama, for the sum of $7500.00 *dollars* and no cents, due us this day for work done, labor performed and material actually furnished the County in and about the building of the Court House building, as shown by Exhibit "A" hereto attached and made a part of this application, which sum please pay and oblige,

Yours respectfully,

B. C. BYNUM CONSTRUCTION CO.,
Contractors,

By B. C. BYNUM.

93 EXHIBIT "A."

STATE OF ALABAMA,
Shelby County:

I, A. P. Longshore, Probate Judge in and for said County and State, hereby certify that before me this day personally appeared B. C. Bynum in behalf of B. C. Bynum Construction Company, contractors, and who being by me first duly sworn, deposes and says that he has personal knowledge of the facts herein stated for and in behalf of B. C. Bynum Construction Company, contractors and builders of the County Court House of Shelby County, Alabama, and that said contractors have performed the work and labor and furnished the material to the amount and value below stated, in and about the building of the Court House under their contract with the County of Shelby, which amount and sum has been earned and represents a part of the contract price for erecting the entire building, as follows, to-wit:

To Items Composing this Claim:

For steam heating, metal work, carpenter work plumbing, plastering and trimming	$87,500.00
Amount received on former estimates	60,720.00
	68,220.00
Total due in cash for this claim net	7,500.00
Principal warrants	$87,500.00
Int. Coupon warrants	9,043.00
Total due in warrants for this claim	$16,543.00

B. C. BYNUM CONSTRUCTION COMPANY,
By B. C. BYNUM,
Who Had Personal Knowledge of the Facts Above Sworn to.

Sworn to and subscribed to before me this the 8th day of Dec. 1906.

[SEAL.] A. P. LONGSHORE,
Probate Judge, Shelby County.

Architect's Certificate No. 8.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALABAMA, 8th Day of Dec., 1906.

Hon. A. P. Longshore, Trustee, and Hon. Court of County
91 Commissioners of Shelby County, Alabama.

GENTLEMEN: I, Frederick Austield, heretofore duly appointed architect and superintendent of the Building and erection of the Court House at Columbiana for Shelby County, Alabama, within the corporate limits of said town, hereby certify that we have carefully inspected all of the material furnished for work done on said court house up to this time. We further certify that the work done and the material furnished, as shown by the above and foregoing itemized sworn bill of account, marked Exhibit "A" rendered to us by B. C. Bynum Construction Company, contractors and builders of said Court House, has been furnished, done and supplied to the County in a satisfactory and workmanlike manner and to our satisfaction, the same being in conformity with the plans and specifications called for by the County's contract. We further certify that said County has actually received the work and labor done and materials furnished by said contractors under their contract with the County to the amount of seven thousand five hundred dollars and no cents, as shown by Exhibit "A" and that said contractors have a just claim against the County in the full, true and correct sum therein

mentioned, which sum represents the proportionate amount of the contract price earned by said contractors, we having personally examined into the correctness and justness of said claim, and know the same to be now due and payable. We further certify that said contractors are now entitled to receive from the trustee provided for in the contract of the County, and from your Honorable body, so many of the certificates of indebtedness and warrants of the County as may be sufficient to pay said sum earned above certified.

Respectfully yours,

FREDERICK AUSFIELD,
Architect and Superintendent of Shelby County Court-house Building.

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Court's Allowance of Claim No. 8.

The following application and claim No. 8 of B. C. Bynum Construction Company, contractors and builders of the County
95 Court House for said County, on a site within the corporate limits of the City of Columbiana, designated by the Court of County Commissioners was presented for them for allowance, for work and labor done and material furnished the County under their contract with the County, amounting to $7,500.00 *Dollars* and no cents. Whereupon the Court proceeded to examine said claim, and finding the same to be a preferred claim against the County of Shelby, that the same was duly itemized and sworn to, as required by law, and that said claim was accompanied by a proper certificate of the County Architect in supervision of the erection of said building, to the effect that the County had actually received the benefit of said amount under its contract, and that the work and material were satisfactory. Whereupon, the Court being further and fully advised in the premises, and upon finding that the County had received the benefit claimed to the amount of said sum as shown by said contractors' claim; it is, therefore, ordered that said claim be received, accepted, approved, audited, registered and allowed in full. That the Trustee or Probate Judge, A. P. Longshore, deliver to said contractors principal (interest bearing) Court House warrants and certificates numbered from 122 to 135, inclusive, for the sum of $7,500.00 which principal warrants shall draw interest from January 1st, 1906 at the rate of 6½ per cent. payable annually, and have annexed to them coupon warrants sufficient to represent and pay for the interest accruing on said principal warrants and on so much of the contract price earned and represented by said principal warrants, and sufficient to cover the contractors' claim, and that all of said warrants be duly signed and sealed in behalf of the County by A. P. Longshore, as Probate Judge, of the County, and countersigned by the Clerk as of the 27th day of January, 1905, the same date as contract, and that he deliver the same to said contractors as per contract in payment of their claim No. 8,

which claim represents a part of the debt and contract price now earned by the Constractors under their contract with the County, dated the 25th day of July, 1905, and confirmed September 11th, 1905, and which the County is now justly due them, provided that said coupon warrants shall not be sealed, but shall be signed by the lithograph fac-simile signature of the Probate Judge.

96 STATE OF ALABAMA,
Shelby County:

I, A. P. Longshore, Probate Judge in and for said State and County, do hereby certify that the foregoing words and figures, consisting of the contractors' claim No. 8, and the Court's Allowance No. 8 compose a true and correct copy and transcript of the record of the Minutes of the Commissioners' Court of said County, as the same appears in Minute Record 2, page 122 in my office.

Witness my hand and official seal, this 8th day of December, 1906.

[OFFICIAL SEAL.] A. P. LONGSHORE,
Probate Judge.

Minutes of the Commissioners' Court, Book 2, Page 211.

STATE OF ALABAMA,
Shelby County:

Court of County Commissioners, Regular Adjourned July Term, 1907.

At this a regular adjourned July Term, 1907, of the Court of County Commissioners of Shelby County, State of Alabama, held on the 18th day of September, 1907, at its regular meeting place in the Court House, in the city of Columbiana, at which regular meeting a quorum was present, consisting of the following members, to-wit: A. P. Longshore, Probate Judge, and Commissioners O. Cost, W. H. O'Barr, J. E. Dykes and Pleasant Shaw, the following among other proceedings were had:

Contractors' Application, Claim No. 9.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., 18th Day of Sept., 1907.

Honorable Court of County Commissioners of Shelby County; Frederick Ausfield, Architect; Hon. A. P. Longshore, Trustee.

GENTLEMEN: Please examine my claim against Shelby County, Alabama, for the sum of Four Thousand Dollars and no cents, due on this day for work done, labor performed and material actually furnished the County in and about the building of the County Court House building, as shown by Exhibit "A" hereto attached, and

made a part of this application, which sum please pay and oblige.

97 Yours respectfully,

B. C. BYNUM CONSTRUCTION CO.,
Contractors,

By B. C. BYNUM.

EXHIBIT "A."

STATE OF ALABAMA,
Shelby County:

I, A. P. Longshore, Probate Judge in and for said State and County, hereby certify that before me this day personally appeared B. C. Bynum in behalf of B. C. Bynum Construction Company, contractors, and who being by me first duly sworn, deposes and says that he has personal knowledge of the facts herein stated for and in behalf of B. C. Bynum Construction Company, contractors and builders of the County Court House of Shelby County, Alabama, and that said contractors have performed the work and labor and furnished the material to the amount

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and value below stated, in and about the building of the Court House under their contract with the County of Shelby, which amount and sum has been earned and represents a part of the contract price for erecting the entire building, as follows, to-wit:

For furnishing work to complete buildings including the remainder of 15% reserved	$4,000.00
	$4,000.00
Less —% retained	.....
Less amount heretofore received on contract	.....
Total due in certificates for this claim	$4,000.00
Principal warrants	$4,000.00
Interest coupon warrants	4,980.50
Total due in warrants for this claim	$8,980.50

B. C. BYNUM CONSTRUCTION CO.,
By B. C. BYNUM,
Who Has Personal Knowledge of the Facts Above Sworn to.

Sworn to and subscribed to before me this the 18th day of Sept. 1907.

[SEAL.] A. P. LONGSHORE,
Probate Judge, Shelby County, Ala.

98 *Architect's Certificate No. 9.*

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., 18th Day of September, 1907.

Hon. A. P. Longshore, Trustee, and Hon. Court of County Commissioners of Shelby County, Alabama.

GENTLEMEN: I, Frederick Ausfield, heretofore duly appointed architect and superintendent of the building and erection of the Court House at Columbiana for Shelby County, Alabama, within the corporate limits of said town, hereby certify that we have carefully inspected all of the material furnished for and work done on said Court House up to this time. We further certify that the work was done and material furnished, as shown by the above and foregoing itemized sworn bill of account, marked Exhibit "A" rendered to me by the B. C. Bynum Construction Company, Contractors and builders of said Court House, has been furnished, done and supplied to the County in a satisfactory and workmanlike manner and to our satisfaction, the same being in conformity with the plans and specifications called for by the County's contract. We further certify that said County has actually received the work and labor done and material furnished by said contractors under their contract with the County to the amount of Four thousand dollars and no cents, as shown by Exhibit "A," and that said contractors have a just claim against the County in the full, true and correct sum therein mentioned, which sum represents the proportionate amount of the contract price earned by said contractors, we

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having personally examined into the correctness and justness of said claim, and know the same to be now due and payable. We further certify that said contractors are now entitled to receive from the Trustee provided for in the contract of the County and from your honorable body so many of the certificates of indebtedness and warrants of the County as may be sufficient to pay said sum earned hereinabove certified.

Respectfully yours,

FREDERICK AUSFIELD,
Architect and Superintendent of
Shelby County Court-house Bldg.

99 *Court's Allowance of Claim No. 9.*

The foregoing application and claim No. 9 of B. C. Bynum Construction Company, contractors and builders of the County Court House for said County, on a site within the corporate limits of the City of Columbiana, designated by the Court of County Commissioners, was presented by them for allowance for work and labor done and material furnished the County under their contract with the

County, amounting to Four thousand dollars and no cents. Whereupon the Court proceeded to examine said claim, and finding the same to be a preferred claim against the County of Shelby, that the same was duly itemized and sworn to, as required by law, and that said claim was accompanied by a proper certificate of the County Architect in supervision of the erection of said building, to the effect that the County had actually received the benefit of said amount under its contract, and that the work and material were satisfactory.

Thereupon the Court, being further and fully advised in the premises, and upon finding that the Court has received the benefit claimed to the amount of said sum, and as shown by said contractors' claim. It is, therefore, ordered, that said claim be received, accepted, approved, audited, registered and allowed, in full. That the Trustee or Probate Judge, A. P. Longshore, deliver to said contractors, principal (interest bearing) Court House warrants and certificates numbered from 137 to 144 inclusive, for the sum of Four thousand ($4,000.00) Dollars, which principal warrants shall draw interest from January 1st, 1906 at the rate of 6½% payable annually, and have annexed to them coupon warrants sufficient to represent and pay for the interest accruing on said principal warrants and on so much of the contract price earned and represented by said principal warrants, and sufficient to cover the contractor's claim, and that all of said warrants be duly signed and sealed in behalf of the County by A. P. Longshore, as Probate Judge of the County, and countersigned by the County Clerk, as of the 25th day of July, 1905, the same date as contract, and that he deliver the same to said contractors as per contract in payment of their claim No. 9, which claim represents a part of the debt and contract price now earned by the contractors under their contract with the
1906 County, dated the 25th day of July, 1905, and confirmed September 11, 1905, and which the County is now justly due them, provided the said coupon warrants shall not be sealed, but shall be signed by the lithograph fac-simile signature of the Probate Judge.

STATE OF ALABAMA,
Shelby County:

Office of Probate Judge.

I, A. P. Longshore, Probate Judge, in and for said State and County, do hereby certify that the foregoing words and figures, consisting of the contractor's claim No. 9, Architect's certificate No. 9 and the Court's allowance No. 9, compose a true and correct copy and transcript of a record of the Minutes of the Commissioners' Court of said County, as the same appears in Minute Record 2 page 211 in my office.

Witness my hand and official seal this 18th day of September, 1907.

[SEAL.]

A. P. LONGSHORE,
Probate Judge.

STATE OF ALABAMA,
Shelby County:

I, Joe S. Bird, Treasurer of Shelby County, Alabama, do hereby certify that the foregoing words and figures are a true and correct copy of the minutes of the Commissioners' Court of Shelby County, Alabama, consisting of contractor's claim, Architect's certificate and Court's allowance of claim-, numbered from one to nine both inclusive, as the same appears in the Minute record Book No. 1 and No. 2, of the Commissioners' Court of Shelby County, Alabama.

In witness whereof I have hereunto set my hand this the 21st day of February, 1916.

JOE S. BIRD,
County Treasurer.

101 STATE OF ALABAMA,
Shelby County:

I, Oliver Miles, Clerk of the Board of Revenue of Shelby County, Alabama, do hereby certify that the foregoing words and figures set out shown in the preceding pages numbered 1 to 35, inclusive, is a true and correct copy of the record of the Court of County Commissioners of said County as the same appear of record in my office in the proceedings of said Court as the same are recorded in Book No. 1 and No. 2 of the Minute Record of said Court.

In witness whereof, I have hereunto set my hand this the 21st day of February, 1916.

OLIVER MILES,
Clerk of the Board of Revenue of said County.

Minutes of the Commissioners' Court, Book No. 2, Shelby Co.
Minutes of Commissioners' Court, January Term, 1907.

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Final Record of the Minutes of the Court of County Commissioners of Shelby County, Alabama, Regular Adjourned January Term, 1907, 20th, and 21st Day- of February, 1907, Columbiana, Alabama.

STATE OF ALABAMA,
Shelby County:

Court of County Commissioners of Shelby County.

At this a regular meeting and adjourned January Term, of the Court of County Commissioners of Shelby County, in the State of Alabama, held under and by virtue of section 951, and chapter 22 of the Code of 1896 at its regular meeting place at the Court House of said County at which regular meeting a quorum was present consisting of the following members, to-wit: A. P. Longshore, Judge of

Probate, presiding and Commissioners John E. Dykes, Pleasant Shaw, O. Cost, and W. H. O'Barr, and the following resolution was introduced and upon vote taken the same was unanimously
102 adopted, passed and approved by all the members present, and ordered spread in full upon the minutes of the Court, to-wit:

A Resolution.

Section 1. Whereas, heretofore, to-wit the County of Shelby

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made and entered into a contract with B. C. Bynum doing business under the firm name and style of the B. C. Bynum Construction Company, for the purpose of erecting the new County Court House within the corporate limits of the City of Columbiana, the County Seat of said County on the 20th day of July, 1905, which contract was by resolution of this court confirming it made on September, 11th, 1905, duly recorded upon the minutes of this Court, whereby said court agreed to pay said contractors the sum of seventy one thousand, eight hundred and ninety ($71,890.00) Dollars, pursuant to and for the labor and material called for and specified in the plans and specifications adopted by the Court for said Court House Building. And whereas said contractors have complied with said contract on their part and whereas this Court has employed said B. C. Bynum Construction Company, and directed them under and by virtue of said contract, and Article XI thereof, for and in behalf of said county, to provide additional labor and material to complete said Court House Buildings in conformity with which this Court has determined to be necessary to make said Court House building a complete and satisfactory structure in order that it may best subserve the uses for which it was intended. And whereas this County has now bought and purchased from the contractors the said new Court House building, delivered and finished for the princi-
103 pal sum of $103,890.00—but for the extra labor, material and furnishings, there being still due $32,000.00 and said contractors having complied with their said employment and supplied said labor and material and now appear in open court and file their claim for extra labor and material furnished said County before this court, which claim is as follows, to-wit:

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALABAMA, 21st Day of February, 1907.

Honorable Court of County Commissioners of Shelby County, Ala., to Mr. Frederick Ausfield, Architect.

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GENTLEMEN: Please find our claim herewith submitted for your examination against Shelby County for the sum of $32,000.00, due

us this day by your County for extra labor and material performed and furnished said county in and about the building and completion of the New Court house Building as shown by Exhibit "A" hereto annexed and made a part of this application and claim, which claim you will please examine and pay us with the understanding that we will accept County Warrants *as* a reduced rate of interest, to wit: 6% interest payable semi-annually, provided said warrants shall be given the security and protection as heretofore agreed with me by the Court and as were the original warrants issued under my contract made with the County and approved by it September 11th, 1905.

Very respectfully,

B. C. BYNUM CONSTRUCTION CO.,
By B. C. BYNUM, *Contractor*.

EXHIBIT "A."

STATE OF ALABAMA,
Shelby County:

Office of Judge of Probate.

I, A. P. Longshore, Judge of Probate, in and for said State and County, do hereby certify that before me this day, personally appeared B. C. Bynum, who is personally known to me and who appears in behalf of the B. C. Bynum Construction Company, the builders of the New Court House of Shelby County, and who being by me first duly sworn, deposes and says that he has personal knowledge of the facts herein stated and made for and in behalf of the B. C. Bynum Construction Company, and that said contrac-
104 tors have performed the work furnished the material and value below stated in and about completing the Court House for said County under their contract with the County entered into July 20th, 1905, and Article XI of said contract, which amount and sum has been justly earned and represents the amount and true value of all extra labor and material furnished said County and not here-

tofore included in the plans and specifications for said building, but as directed by the Court of County Commissioners and necessary to complete said Court House as directed by the County and County Architect, said Court House being now, free from all liens and encumbrances, placed or caused to be placed thereon by the contract about finished, ready for occupancy and acceptance by the County and its officials, and that an itemized account of said extra labor and material is as follows:

1st. Marble and marble work in veneering the Court House all the way around with marble instead of press brick as was first required by the specifications	Price	$7,500.00
2nd. Putting in a sewer system and sewer work for said Court House	Price	$1,250.00

3rd. Plumbing, plumbing work and pipes for plumbing system for said Court House.....	Price	$3,500.00
4th. Steam Heater, steam heating system, put in and steam heating work for said Court House..	Price	$3,800.00
5th. Changing the wood court house balcony to a steel and fire proof balcony, and work thereon.	Price	750.00
Raising the Court House roof and the building four (4) feet all the way around; putting in a extra flue or chimney, excavating for the four additional basement rooms, beneath the court house; concrete and concrete work done in and under said Court House; Building underneath same a basement of four additional rooms marbled and tiled complete ..... (Fifteen thousand and two hundred dollars.)	Price	$15,200.00

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Total $32,000.00

B. C. BYNUM CONSTRUCTION CO.,
105 By B. C. BYNUM,
Who Has Personal Knowledge of the Facts above Sworn to

Sworn to and subscribed to before me this 21st day of February, 1907.

[SEAL.] A. P. LONGSHORE,
Judge of Probate of Shelby Co., Ala.

Architect's Certificate No. 1 for Extra Work.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALABAMA, 21st Day of February, 1907.

Honorable Court of County Commissioners, Shelby Co., Ala.; Honorable A. P. Longshore, Trustee and Judge of Probate.

GENTLEMEN: I, Frederick Ausfield, of Montgomery, Ala., heretofore duly appointed and employed by you as the Architect and Superintendent of the building of the New County Court House at Columbiana, Alabama, for Shelby County, on a site within the corporate limits of said town, assigned and selected by you, do hereby certify that I have inspected all of the labor and material which has been furnished and done on said Court House Building from the beginning of my appointment up to this time. I further certify that the labor performed and material furnished as shown by the above and foregoing itemized account marked Exhibit "A" and rendered to me *my* B. C. Bynum Construction Company, the contractors and builders of said Court House, had been earned, furnished and sup-

plied to the County in workmanlike manner and to my satisfaction, the same being in conformity with the directions of the Court amending the plans and specifications called for by the County's contract, dated July 20, 1905, and confirmed September 11, 1905, and the said contractors have a just claim against said County for the sums therein mentioned, which sums represents the balance due for completing the Court House. I further certify that the Court House is free from all materialsmen's liens or other liens, the law in Ala. forbidding the filing of liens against a Court House building in this state: We further certify that the Court House — about ready for delivery and acceptance by the County and that the contractor upon the payments of the sums due him is entitled to a discharge.

Respectfully,

FREDERICK AUSFIELD,
By F. A. CHURCH,
Architect and Superintendent of the Shelby County Court-house Building.

106 *Court of County Commissioners' Allowance No. 1 for Extra Work.*

Section 2. The application and claim No. 1 for extra work of B. C. Bynum Construction Company, contractors and builders of the Court House for said County, located with- the corporate limits of Columbiana, Ala., being presented this day in writing in open court for allowance and payment for furnishing the County extra labor and material over and above that stipulated for in the original plans and specifications of the County Court House building and which claim amounts to $32,000.00; thereupon the Court proceeded to examine into said claim and finding the same to be offered with a proviso that the contractor will accept his remuneration payable in deferred payments or installments in money represented by County Warrants bearing 6% interest, payable semi-annually as heretofore agreed upon by this Court; that said claim is a preferred claim against the County, that the same was duly itemized and sworn to as required by law; that said claim was accompanied by a proper certificate that the County Architect employed to superintend the erection of the building to the effect that the County had actually received the benefit to the amount of said claim under its agreement with said contractors and that the work performed, material were all satisfactory to said architect.

Thereupon the Court being further advised in the premises and upon investigating upon their own account also and finding that the County has received the benefit claimed by said contractors to the full amount of $32,000.00 and as shown by said contractors' claim and finding that the full allowance of said claim would be just. It is therefore, ordered that the agreement by the County to purchase and pay for the extra labor and material advanced and

furnished the County by B. C. Bynum Construction Co., under Article XI of the contract confirmed by this court, Sept. 11th, 1905, and that the claim for the same be received, approved, audited, registered, and is hereby allowed in full, and that the Court deems the price charged to be fair and reasonable, and the County agrees and hereby promises to pay the B. C. Bynum Construction Company said $32,000.00 for the property shown in said claim at the time and in the manner hereinafter set out and shown, together with the interest thereon from the first day of Jany. 1907 at the rate of 6% *per centum* per annum, payable semi-annually; that the
167 Judge of Probate and Trustee, A. P. Longshore, certify and surrender to said B. C. Bynum Construction Company certificates of indebtedness and warrants drawn on the County Treasurer and signed by and sealed in behalf of the County, through this court by the Judge of Probate and countersigned by the Probate Clerk and said Judge of Probate shall deliver a sufficient amount of said principal warrants to said contractors in full payment of their claim No. 1 for extra work, the labor and material earned by them under their contract with the county to build a new Court House, all of which being necessary to complete the said building. It further appearing from the certificate of the architect that said Court House building is now complete and finished and the contractor entitled to a discharge, the Court thereupon made an inspection of said Court House building accompanied by the Architect and finding the same finished and complete the above certificate of the Architect being his final certificate called for under the agreement of the County with its contractor, and the Court upon examining the Court House and all parts in reference thereto is satisfied that said Court House building is about complete and finished as required by the County contract

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with B. C. Bynum Construction Company, and in accordance with the plans and specifications heretofore adopted. It is further ordered that said Court House Building be accepted by the County of Shelby and occupied by its County officials, and that said contractors, the B. C. Bynum Construction Company, and the sureties on their bond given to secure the faithful performance of their contract be and they are hereby relieved and finally discharged from further liability, when the work now going on is finished and the contractor is paid.

Be it further ordered that said warrants shall be styled "Supplementary Warrants" to those already issued to pay for the initial contract price for said Court House, and shall have and are hereby given all the force and effect and binding obligation upon the County of Shelby as are and have been given the other Court House Warrants heretofore issued said B. C. Bynum Construction Company. It being expressly understood that the provision of said contract and this resolution and order of the Court is a binding agreement between the County and the B. C. Bynum Construc-

108 tion Company and the holders for value of the interest bearing coupon warrants issued pursuant hereto, and that this resolution is a contract supplementary to but a part of the original contract entered into by B. C. Bynum Construction Company and this County date- July 20, 1905, and adopted by the Court September 11th, 1905, and none of the warrants and interest coupons annexed to them and issued hereunder shall in no way ever be cancelled, reduced, impaired or unpaid, and a delivery thereof of them or any of them to the contractor, B. C. Bynum Construction Co., shall be a waiver by the County or any of its taxpayers of all defences thereto of every nature whatsoever and that said contract and this resolution is a continuing and binding contract between B. C. Bynum Construction Company and Shelby County, and shall be in no wise broken or in any way impaired, modified or repealed so long as any of said Court House warrants of whatever value whether supplementary warrants or not and whether principal or interest issued to said contractors shall be outstanding or unpaid.

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Sec. 3. Be is further ordered by the Court that the debt due the B. C. Bynum Construction Company, amounting to $32,000.00 shall be broken into fourteen annual installments from one to fourteen, inclusive, and that said first installment shall mature February 1st, 1917, and the remaining installments shall mature annually thereafter. That said installments shall also compose in the aggregate a portion of the principal and all of the interest which shall fall due each year and said installments shall be subdivided in such manner as that the principal sum shall be represented by principal warrants and the interest due thereon shall be represented by coupon warrants annexed to them, that said principal warrants shall be dated the 1st day of January, 1907, and shall be sixty-four in number, Numbered from One to sixty-four both inclusive, and shall be of $500.00 denomination each, the said principal warrants and sums of money called for by them upon their face shall bear interest from the first day of January, 1907, at the rate of 6% *per centum* per annum, payable semi-annually on the first day of February and August of each year, said principal warrants beginning to mature in the year 1917 and ending in 1930, said interest shall be evidenced by detachable interest coupons annexed to said
109 principal warrants and both interest and principal are hereby made payable at the office of County Treasurer in Columbiana, Alabama, or at the Banking House named in said warrants: said warrants and coupons shall be made payable to said contractors, their assigns or bearer and shall be signed in behalf of Shelby County through this Court by its Judge of Probate and countersigned by the Probate Clerk and said principal warrants shall have affixed to them the official seal of the probate Judge provided that said coupons shall not be sealed, but may be signed by affixing to them the fac-simile lithographed signature of the Probate Judge or other officers, and that said warrants and the interest coupons an-

nexed to them shall represent the Court House debt due the B. C. Bynum Construction Company for extra labor and material furnished by them to complete the new Court House building and when said warrants have been so subdivided herein ordered, the said principal warrants shall have the following numbers, amounts and maturities, to-wit:

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Number.	Total.	Maturities.
1, 2, ...	$1,000.00	Due Feb. 1st, 1917
3, 4, 5, 6, 7.....	2,500.00	Due Feb. 1st, 1918
8, 9, 10, 11, 12.....	2,500.00	Due Feb. 1st, 1919
13, 14, 15, 16, 17.....	2,500.00	Due Feb. 1st, 1920
18, 19, 20, 21, 22.....	2,500.00	Due Feb. 1st, 1921
23, 24, 25, 26, 27.....	2,500.00	Due Feb. 1st, 1922
28, 29, 30, 31, 32.....	2,500.00	Due Feb. 1st, 1923
33, 34, 35, 36, 37.....	2,500.00	Due Feb. 1st, 1924
38, 39, 40, 41, 42.....	2,500.00	Due Feb. 1st, 1925
43, 44, 45, 46, 47.....	2,500.00	Due Feb. 1st, 1926
48, 49, 50, 51, 52.....	2,500.00	Due Feb. 1st, 1927
53, 54, 55, 56, 57.....	2,500.00	Due Feb. 1st, 1928
58, 59, 60, 61, 62.....	2,500.00	Due Feb. 1st, 1929
63, 64	1,000.00	Due Feb. 1st, 1930

Section 4. Be it further ordered by the Court that the form of said County Court House supplementary warrants and certificates of indebtedness and the interest coupons to be annexed to them with their necessary varieties as to numbers, debts, sums and maturities, together with endorsements thereon shall be substantially as follows to-wit:

110- UNITED STATES OF AMERICA.
State of Alabama, Shelby County:

Court-house Warrant and Certificate.

Supplementary Warrant No. 1. $500.00.

This is to certify that the County of Shelby, in the state of Alabama, is justly indebted and has promised to pay to B. C. Bynum Construction Company, of Montgomery, Alabama, the sum of Five hundred ($500.00) Dollars, due and payable on the 1st day of February, 1917, and the Treasurer of said County is hereby authorized

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ordered and directed to pay said B. C. Bynum Construction Company, their assigns, or bearer, the sum of $500.00 in full settlement of the amount hereby evidenced out of the Special County Court House fund, levied and created for that purpose upon the presenta-

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tion and surrender of this warrant and certificate of indebtedness and maturing coupons at his office in the city of Columbiana, in the State of Alabama, or at office of F —— & Co. in the City of New York and State of New York. It is further certified that this portion of the contract price and the said sum of money hereby representing it, allowed thereon and shown upon the face of this warrant bears interest by virtue of a valid subsisting contract below referred to, as well as this warrant at the lawful rate of 6 per centum (6%) per annum, payable semi-annually hereafter on the 1st day of February and August of each year, and as evidenced by and upon the presentation and surrender of the interest coupons hereto annexed and until all of said sums and portion of the contract price shall have been fully paid. This warrant has been issued by said County in part payment of the extra cost of labor and material furnished and necessary to complete and furnished the new County Court House building for said County, erected within the corporate limits of the City of Columbiana, Alabama, the County seat in and for said State and County, which labor has been actually done, said material actually furnished and advanced to said County to the extent and amount of this warrant and of the series of warrants of which this is one for said purpose; the indebtedness represented by this and the other warrants of said series has been by the Court of County
111 Commissioners of said County carefully investigated and found to be just and that the County has received the benefit thereof and the claim for said indebtedness has been duly audited and allowed by the Court of County Commissioners of said County, this warrant is one of two warrants aggregating $1,000.00 and maturing the same day, the said two warrants composing the first of fourteen installments into which the entire contract price for completing said Court House building, to-wit: Thirty-two thousand ($32,000.00) Dollars is divided; one of said installments being payable on the 1st day of February in each of the years, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, all of which warrants have been duly issued to complete and furnish said Court House; It is hereby certified and recited that all conditions and things required by the Constitution and laws of the State of Alabama to be done precedent to and in the issuance of this warrant, and said series of warrants, have been properly and regularly done, happened and performed in regular and due form and time, as required by law, that this and the other warrants aforesaid are issued in compliance with the terms of the contract entered into between said County and B. C. Bynum Construction Company, contractors, dated July 20, 1905, and confirmed Sep. 11, 1905, and that this warrant and annexed coupons have also been issued pursuant to a supplementary contract and an order of the Court of County Commissioners of said County duly entered into, and that this warrant and the coupons hereto annexed are issued for and are conclusive proof of the fulfillment of the proportionate part of the contract aforesaid represented by the amount of this warrant, and that sufficient and proper provision by the levy of one fourth of one per centum special tax annually, which, when collected, shall be exclusively ap-

plied to the payment of this warrant and the interest coupons hereto annexed as pledged by said contract and the order of the Court of County Commissioners of said County, as they severally fall due has been and until the full payment of the principal and interest thereof will be made sufficient to pay the warrant evidenced by this warrant when and as the same matures.

In witness whereof the County of Shelby in the State of Alabama through its court of County Commissioners, has caused this warrant to be signed by the Judge of Probate of said County and his official seal to be hereto affixed and countersigned by

112 Page 115.

The probate Clerk and the interest coupons annexed to be signed by the lithographed fac simile signature of said Judge of Probate, as of the first day of Jan'y, A. D. 1907.

[SEAL.] SHELBY COUNTY, ALA.,

By —— ——,

Judge of Probate, Shelby County, Alabama.

Countersigned:

By —— ——,

Probate Clerk.

Form of Coupon.

Supplementary. $12.50

Number —.

On February 1st, 1907,
Shelby County,

In the State of Alabama, will be due, and the Treasurer of said County is hereby directed and ordered to pay B. C. Bynum Construction Company, their assigns or bearer $12.50 out of the special Court House funds at the office of County Treasurer at Columbiana, in said State and County, or at the office of Farson Son & Co, in the city and State of New York, being six months' interest due said contractors on the sum of money and portion of the contract price represented by supplementary Court House Warrants No. —.

(Signed) A. P. LONGSHORE,

Judge of Probate, Shelby County, Ala.

Registered against the Special Court House fund of Shelby Co., Ala., and allowed to B. C. Bynum Construction Co. for extra work.

—— ——,

County Treasurer.

This interest sold and this debt and coupon warrant representing it is assigned for value received to —— —— or bearer.

B. C. BYNUM CONS. CO., *Contractors.*

That on the back of said warrant shall appear the following forms:

Certificate of Identification.

I, A. P. Longshore, Judge of Probate and Trustee, do hereby certify that this is one of the warrants held in trust by me for delivery upon the allowance of the debt represented by it, and upon

113 Page 146.

the order of the Court of County Commissioners of Shelby County, Alabama, and that I have delivered the same to B. C. Bynum Construction Company, County Contractors, in conformity with my agreement of trust, together with the annexed interest coupons.

_____,
Judge of Probate and Trustee.

Registration.

STATE OF ALABAMA,
Shelby County.

Office of County Treasurer, Columbiana, Ala.

Supplement No. 1. $500.00.

This supplementary warrant and the annexed coupons, presented for registration, and registered as and against the Special Court House fund of Shelby County, Alabama, and allowed to B. C. Bynum Construction Company, on account of their contract for completing and furnishing the Court House of Shelby County pursuant to an order of allowance made by the Court of County Commissioners on the — day of February, 1907. Witness my lithograph fac simile signature to the annexed interest coupons and my hand to this supplementary warrant, this the — day of —, 1907.

_____,
County Treasurer.

Assignment.

This is to certify that we have received the within principal County Court House warrant, and the interest coupons annexed thereto from Shelby County, Alabama, and its Judge of Probate as above written, and for value received, we hereby transfer, assign, sell and deliver to _____ or bearer, all right, title and interest we have in and to the same and also the proportionate part of the initial and supplemental contract we made with the said County on the date herein referred to, and also the proportionate part of said contract price and portion of the debt due us with the interest thereon by said County, which is represented by the amounts called for by the principal warrant and the annexed coupon; and said assigns, or bearer is hereby subrogated to all claims, which are or may be secured to us in said contract which

was made and dated the 20th day of July, 1905, and confirmed the 11th day of September, 1905, and supplemented on the 25th day of February, 1907, and we hereby authorize the said assigns or
114 bearer hereof to collect the same and give full receipt and acquittance therefor in our name.

Witness our lithographed fac simile signature assigning the annexed interest coupon warrants and our hand and seal assigning this principal warrant.

B. C. BYNUM CONSTRUCTION CO.,
By ——— ———,
Contractors & Builders of the New County Courthouse of Shelby County, Alabama.

Section 5. Whereas said Shelby County has agreed and contracted with said B. C. Bynum Construction Company to furnish the labor and material to complete the Court House as herein above shown for the sum of thirty two thousand ($32,000.00) Dollars, and has agreed and promised to pay said $32,000.00 to them, their assigns or the bearer of the County warrants herein authorized in annual installments, together with interest thereon at 6 per centum per annum, payable semi annually, and whereas said County has agreed that said interest shall become as much a part of the contract price as the principal sum of said contract price has or may become, and whereas said interest shall be paid in installments, semi-annually in each year, Now, therefore, it is ordered that the entire amount of interest and principal combined which said County shall pay out during any one year under this agreement which has been made under and by virtue of the law of Alabama, and as announced by the Supreme Court of Alabama, April 18, 1905, in the case of Tally et al. vs. Court of County Commissioners of Jackson County, et al., and found in Volume 39 page 167 of the Southern Reporter, as follows: The total annual installments, including principal and interest,

Installment number.	Semi-annual interest.	Annual principal.
1st. Due Feb. 1st, 1907,	$160.00	
Due Aug. 1st, 1907,	$960.00	
2nd. Due Feb. 1st, 1908,	$960.00	
Due Aug. 1st, 1908,	$960.00	
3rd. Due Feb. 1st, 1909,	$960.00	
Due Aug. 1st, 1909,	$960.00	
4th. Due Feb. 1st, 1910,	$960.00	
Due Aug. 1st, 1910,	$960.00	
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5th. Due Feb. 1st, 1911,	$960.00	
Due Aug. 1st, 1911,	$960.00	
6th. Due Feb. 1st, 1912,	$960.00	
Due Aug. 1st, 1912,	$960.00	
7th. Due Feb. 1st, 1913,	$960.00	
Due Aug. 1st, 1913,	$960.00	

Installment number.	Semi-annual interest.	Annual principal.
8th.	Due Feb. 1st, 1914, $960.00	
	Due Aug. 1st, 1914, $960.00	
9th.	Due Feb. 1st, 1915, $960.00	
	Due Aug. 1st, 1915, $960.00	
10th.	Due Feb. 1st, 1916, $960.00	
	Due Aug. 1st, 1916, $960.00	
11th.	Due Feb. 1st, 1917, $960.00	
	Due Aug. 1st, 1917, $930.00	Due Feb. 1st, 1917, $1,000.00

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Installment No.	Semi-annual interest.	Annual principal.
12th.	Due Feb. 1st, 1918, $930.00	Due Feb. 1st, 1918, $2,500.00
	Due Aug. 1st, 1918, 855.00	
13th.	Due Feb. 1st, 1919, $855.00	Due Feb. 1st, 1919, $2,500.00
	Due Aug. 1st, 1919, 780.00	
14th.	Due Feb. 1st, 1920, $780.00	Due Feb. 1st, 1920, $2,500.00
	Due Aug. 1st, 1920, 705.00	
15th.	Due Feb. 1st, 1921, $705.00	Due Feb. 1st, 1921, $2,500.00
	Due Aug. 1st, 1921, 630.00	
16th.	Due Feb. 1st, 1922, $630.00	Due Feb. 1st, 1922, $2,500.00
	Due Aug. 1st, 1922, 555.00	
17th.	Due Feb. 1st, 1923, $555.00	Due Feb. 1st, 1923, $2,500.00
	Due Aug. 1st, 1923, 480.00	
18th.	Due Feb. 1st, 1924, $480.00	Due Feb. 1st, 1924, $2,500.00
	Due Aug. 1st, 1924, 405.00	
19th.	Due Feb. 1st, 1925, $405.00	Due Feb. 1st, 1925, $2,500.00
	Due Aug. 1st, 1925, 330.00	
20th.	Due Feb. 1st, 1926, $330.00	Due Feb. 1st, 1926, $2,500.00
	Due Aug. 1st, 1926, 255.00	
21st.	Due Feb. 1st, 1927, $255.00	Due Feb. 1st, 1927, $2,500.00
	Due Aug. 1st, 1927, 180.00	

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22nd.	Due Feb. 1st, 1928, $180.00	Due Feb. 1st, 1928, $2,500.00
	Due Aug. 1st, 1928, 105.00	
23rd.	Due Feb. 1st, 1929, $105.00	Due Feb. 1st, 1929, $2,500.00
	Due Aug. 1st, 1929, 30.00	
24th.	Due Feb. 1st, 1930, $30.00	Due Feb. 1st, 1930, $1,000.00

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Be it further ordered by the Court that the sums represented by each of the foregoing installments be, and the same are hereby voted, appropriated and set aside out of the Special Court House Funds, which have been and will be hereafter created, levied, and collected in each of the foregoing named years, and when levied and collected said sums of money shall be used exclusively by the Treasurer of said

County for the sole purpose of paying off the above foregoing installments, composed of both the principal and interest, as hereinabove shown.

It is therefore ordered by the Court that there be and there is hereby levied a Special County Court House Tax of one fourth of one per centum upon all of the taxable property of Shelby County as assessed for State taxation, for the year- 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930 or so much of said tax as may be necessary to meet and pay for said installments, and the interest accruing on said foregoing named installments, according as any of them become — and mature and this principal debt of $32,000.00 and the interest thereon at 6% shall have priority over any other debt of Shelby County, subsequently contracted, and it is agreed that said special tax, or so much thereof as may be necessary will be levied from year to year or annually hereafter and that the foregoing debt, and the interest thereon created by this contract shall be, and is a prior claim, or lien upon the County revenues created and collected or to be created and collected by the levy of said special tax, or any part thereof, as authorized by section 215 of Article XI of the Constitution, and of an Act of the Legislature of Alabama, approved September 30th, 1903, at page 307 of the General Acts of the Legislature of the year 1903, and Chapter 31 of the Code of 1896.

And the County agrees not to appropriate or levy any portion of said special tax or special tax fund for any purpose until a sufficient amount of said special tax has been first levied, collected and
117 appropriated each year to pay the installments falling due, annually hereafter by virtue of this contract, and the special tax revenues shall be applied when collected exclusively to the

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installments and annual payments above set out and agreed to in this contract, provided that any surplus arising each year, if any, may be applied to any other lawful purpose.—provided, however, that said County Court House debt of $32,000.00 is both a special charge upon said special tax fund and revenue and also the general obligation of Shelby County, and if for any reason there should be no money in the County Treasury to the credit of the special County Court House Fund at the time any of said warrants, or coupons, become due, then any of said warrants and coupons may be payable out of the General Fund *of* any other fund in the County Treasury not otherwise appropriated. That the Treasurer of said County shall upon the maturity of each of the foregoing annual installments *made* immediate payments of the same to the said contractors, their assigns or the holders of any warrants hereof, the production and surrender of said warrants and coupons annexed to them shall be the receipt of the Treasurer for his payment of the same.

Be it further ordered by the Court that the contract made by the Court with G. W. L. Smith, Attorney, of Brewton, Alabama, for

the preparation of this contract and other services shown in his claim, duly itemized and filed to the amount of $700.00 be and the same is hereby audited and allowed in full and the Judge of Probate is ordered and directed to draw a warrant for $700.00 and interest thereon at 8% until said warrant is paid upon the general fund of the County, in payment of said claim. Ordered by the Court that the Probate Judge shall record this resolution in full upon the Minutes of the Court and receive the compensation at the rate heretofore allowed him for which purpose and that the County Treasurer for registering said warrants herein issued shall receive for his compensation such sum as the Court may allow, according to law. It is further ordered that said warrants and coupons shall be printed and lithographed at the expense of and under the supervision of said G. W. L. Smith; and all foregoing Minutes of this Court allowing any sum or transacting any *sum or transacting any* Court
118 House business including the original contract made by the County with B. C. Bynum Construction

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Company, dated July 21st, 1905, and all the payments and allowances made thereunder by the County and all county warrants issued to represent the same be and the same are hereby confirmed and declared lawful, just and valid in all respects, and in every manner.

The foregoing resolution and Minutes of the Court having been duly read and understood, the same are hereby agreed to, approved and confirmed by the Commissioners Court of Shelby County, of Alabama, the members whereof have hereunto set their hands and seals, the day and year just above written, the 21st day of February, 1907.

A. P. LONGSHORE, [SEAL.]
Judge of Probate.

[SEAL.] PLEASANT SHAW, [SEAL.]
Commissioner.

W. H. O'BARR, [SEAL.]
Commissioner.

J. E. DYKES, [SEAL.]
Commissioner.

STATE OF ALABAMA,
Shelby County:

I, Oliver Miles, Clerk of the Board of Revenue of Shelby County, Alabama, do hereby certify that the foregoing words and figures are a true and correct copy of the Minutes of the Court of County Commissioners of Shelby County, Alabama, as the same appears in Book #2 at pages 133 to 152, inclusive.

In witness whereof I have hereunto set my hand on this the 12th day of February, 1916.

OLIVER MILES,
Clerk of the Board of Revenue of Shelby County, Alabama.

Minutes and Final Record of the Court of County Commissioners of Shelby County, Alabama.

STATE OF ALABAMA,
Shelby County:

Court of County Commissioners, Columbiana, Alabama.

At this, a regular meeting and adjourned July term of the
119 Court of County Commissioners of Shelby County, Alabama, held on the 3rd. day of September, 1907, pursuant to an order of adjournment heretofore made by the Court, and under and by virtue of Section *Bo.* 951 and Chapter 22 of the Code of 1896, at its regular meeting place at the Court House of said County, at which regular meeting a quorum was present, composed of the following members to-wit: A. P. Longshore, Judge of Probate, presiding and commissioners, John F. Dykes, Pleasant Shaw, O. Cost, and W. H. O'Barr, the following resolution was introduced and upon vote *taking therefrom* the same was unanimously adopted, passed and approved by all the members present, and ordered spread in full upon the minutes of the Court, to-wit:

A Resolution.

Section 1. Whereas, heretofore, to-wit: Shelby County, Alabama made and entered into a contract for the purpose of completing the new County Court House Building, and put the same in order by supplying to it the necessary furnishings and fixtures to said Court House erected within the corporate limits of the City of Columbiana, the County seat of said County, whereby said County agreed and promised to pay the sum of Ten thousand five hundred ($10,-500.00) Dollars, pursuant to and for said specified fixtures, and to complete said court House Building in conformity with what this court has heretofore determined to be necessary to make said Court House Building a complete and satisfactory structure, in order that it may best subserve the uses for which it was intended; and whereas, this County has purchased the said fixtures necessary to complete said Court House, and now appear the claimants in open court and file their claim for the payment of said fixtures furnished said County, and which claims are as follows, to-wit:

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALABAMA, June 1, 1907.

Honorable Court of County Commissioners of Shelby County, Alabama; to the Superintendent of said County Court House Building:

Please find herewith submitted for your examination, the claim of ours against Shelby County, Alabama, for the sum of Five thou-

sand four hundred ($5,400.00) Dollars, due this day by your County in and about putting the new court House building in order and completing the same by supplying the necessary furniture and fixtures for said building, as shown in Exhibit "A" hereto
120 annexed and made a part of this application, claim and offer to you, which claim you will please examine, allow and pay, with the understanding that Shelby County Court House Warrants, made payable out of the special County Court House funds, and bearing a reduced rate of interest, to-wit: six (6) per cent. interest, payable semi-annually from date hereof, may be issued to us and provided further that said warrants shall be given the full security and protection of law as were the other County Court House Warrants issued to erect the Court House, and provided, also, that we lose no money by this transaction.

Very respectfully,

THE ART METAL CONSTRUCTION COMPANY,

By ALBERT GILBERT, *Sec'y & Treas.*,

Claimants.

EXHIBIT "A."

STATE OF NEW YORK,
County of Chautauqua:

CITY OF JAMESTOWN, August 9, 1907.

I, Barker D. Chadwick, a Notary Public, with a seal of office, in and for the State and County aforesaid, do hereby certify that before me this day personally appeared Albert Gilbert, who, being by me first duly sworn, deposes and says, that he is the Secretary and Treasurer of the Art Metal Construction Company of Jamestown, New York and general agent of same to make this affidavit and claim; that the labor and material below stated and furnished Shelby County Alabama, in and about completing the new County Court House Building for said County, Alabama, and the itemized account thereof as shown herein and referred to, is full, true, correct and past due and all of said labor and material has been furnished said county under agreements heretofore made (and a duly and more elaborate account thereof is on file with the Probate Judge of said County) and as provided by Section 1403, and section 1405 of the Code of 1896, to-wit:

The fixtures furnished by the Art Metal Construction Company of Jamestown, New York, and set into and made a part of the new County Court House building of Shelby County, Alabama, its vaults, rooms and offices, as per plans and specifications and schedules filed in the office of Probate Judge of said County and heretofore submitted.

Complete as per agreed price..... $5,400.00

121 And affiant further says that he has personal knowledge of the facts herein stated for and in behalf of the Art Metal Construction Company.

ALBERT GILBERT, *Affiant.*

Sworn to and subscribed to before me this the 9th day of August, 1907.

BARKER D. CHADWICK,
Notary Public.

STATE OF ALABAMA,
Shelby County:

COLUMBIANA, ALA., June 1, 1907.

Hon. Court of County Commissioners of Shelby County, Alabama; to the Superintendent of said County Court House Building:

Please find submitted herewith for your examination the claim of ours against Shelby County, Alabama, for the sum of Five thousand, two hundred and fifty ($5,250.00) Dollars, due us this day in and about putting the new County Court House in order and completing the same by supplying the necessary furniture and fixtures for said building, as shown by Exhibit "B" hereto annexed and made a part of this application, claim and offer to you, which claim you will please examine, allow and pay us, with the understanding that Shelby County Court House fund, and bearing reduced rate of interest, to-wit Six (6) per cent. interest payable semi annually from date hereof, may be issued to us, provided further, that said warrants shall be given the full security and protection of law as are the other County Court House Warrants issued to erect Court House, as provided, also, that we lose no money by this transaction.

Very respectfully,

THE TEXAS SEATING COMPANY,
By A. M. McELEVEE,
President, Claimant.

EXHIBIT "B."

STATE OF ALABAMA,
County of Shelby:

COLUMBIANA, ALABAMA, August 16, 1907.

I, Annie Finley, a Notary Public, with a seal of office, in and for said State and County, do hereby certify that before me this day personally appeared A. M. McElevee, who being by me first duly sworn, deposes and says that he is the President and General agent of the Texas Seating Company, of Fort Worth, Texas, and au-
122 thorized to make this claim and affidavit; that the labor and material below stated and furnished Shelby County, in and about completing the new County Court House building, and the itemized account thereof as shown herein and referred to, is full, true, correct and past due, and all of said labor and material

has been furnished said County under agreements heretofore made and as provided by sections 1403 and 1405 of the Code of 1896, to-wit:

The fixtures furnished by the Texas Seating Company of Fort Worth, Texas, and set into and made a part of the new county court house building of Shelby County, Alabama, its vaults, rooms and offices, as per plans, specifications and schedules filed with and in the office of the probate judge of said County and heretofore submitted.

Complete as per agreed price..... $5,250.00

And affiant further says that he has personal knowledge of the facts herein stated for and in behalf of the Texas Seating Company.

A. M. McELEVEE, *Affiant.*

Sworn to and subscribed to before me this the 17th day of August, 1907.

ANNIE FINLEY,
Notary Public.

Paid Art Metal Construction Company..... $150.00

Due Art Metal Construction Company..... $5,250.00
Due Texas Seating Company..... $5,250.00

$10,500.00

STATE OF NEW YORK,
County of Chautauqua:

CITY OF JAMESTOWN, August 31, 1907.

This is to certify that we are a duly organized corporation under the laws of the State of New York, with our principal office at Jamestown, New York, and that we do hereby appoint Mr. W. B. Browne of Columbiana, Shelby County, Alabama, to represent us as our general agent to do all things necessary for us to get our money from Shelby County, Alabama, due us on account of our contract made with said County, amounting to ($5,400.00) Five thousand, four hundred, and said Browne is hereby authorized to accept payment in warrants from said County for said work done in his own name or ours and make the assignments of said warrants upon
123 the back thereof to bearer, and upon the fact thereof by lithographed signature of the interest coupons, as required by law.

ART METAL CONSTRUCTION COMPANY,
By ALBERT GILBERT, *Secretary and Treasurer.*

STATE OF NEW YORK,
County of Chautauqua:

I, Barker D. Chadwick, a Notary Public, with a seal of office in and for said State and County, do hereby certify that the above and foregoing named Albert Gilbert is the Secretary and Treasurer of said Company, came before me this day and being sworn, deposes and says that he was authorized to make and sign the foregoing appointment for said company.

Witness my hand and official seal this the 31st day of August, 1907.

BARKER D. CHADWICK,
Notary Public.

STATE OF TEXAS,
County of ——:

CITY OF FORT WORTH, August 29, 1907.

This is to certify that we are a duly organized corporation under the laws of the State of Texas, with our principal office at Ft. Worth, Texas, and that we do hereby appoint Mr. W. B. Browne, of Columbiana, Shelby County, Alabama, to represent us as our general agent to do all things necessary for us to get our money from Shelby County, Alabama, due on account of our contract made with said County, amounting to $5,250.00 (Five thousand, two hundred fifty) and said Browne is hereby authorized to accept payments in warrants from said County for said work done under said contract, sign all necessary papers, either in his own name or ours and make the assignment of said warrants upon the back thereof to bearer, and upon the face thereof by lithographed signature, of the interest coupons, as required by law.

TEXAS SEATING COMPANY,
By A. M. ELEVEE.

STATE OF ALABAMA,
County of Shelby:

I, Annie Finley, a Notary Public with a seal of office in
124 and for said State and County do hereby certify that the above and foregoing named A. M. Elevee, who is the president of said Company came before me this day and being duly sworn deposes and says that he was authorized to make and sign the foregoing appointment for said company.

Witness my hand and official seal this the 29th day of August, 1907.

ANNIE FINLEY,
Notary Public.

Certificate of Superintendent.

STATE OF ALABAMA.
Shelby County:

COLUMBIANA, ALABAMA, 3rd Day of Sept., 1907.

Honorable Court of County Commissioners of Shelby County, Alabama; Hon. A. P. Longshore, Judge of Probate and Trustee:

I, F. A. Church, heretobefore duly appointed the superintendent of the new county court house building of Shelby County, Alabama, do hereby certify that I have examined the labor and materials and fixtures furnished the County and shown by the above and foregoing itemized accounts, marked Exhibits "A" and "B." I further certify that the same have been furnished and supplied to the County in a workmanlike manner and to my satisfaction, the same being in conformity with the directions of the Court of County Commissioners of said County, and that the County owes the price thereof, and payment of the same is now due.

Respectfully submitted.

F. A. CHURCH,
Superintendent.

Allowance by the Court of County Commissioners.

Section 2. The foregoing application and claims for Court House fixtures, having been presented in writing this day in open court for allowance and payment, for completing said Court House putting the same in order on the interior by supplying the necessary furniture and fixtures to the new County Court House Building, and which claims amount to Ten thousand, five hundred ($10,500.00) Dollars and the Court having proceeded to examine into said claims, and finding the same to be offered with a proviso that the claimants will accept payment therefor in installments, or deferred payments to be hereafter made in money by the County, and which installments and payments shall bear interest at six per centum per annum, payable semi-annually and both the principal
125 and interest thereof to be represented by county court house warrants, payable out of the Court House fund; and the Court further finding that said claims are preferred claims against the County, and the same are duly itemized and sworn to as required by law; that said claims are accompanied by proper certificate of the County superintendent, employed to superintend the erection of the County Court House Building, or to inspect same, to the effect that the County had received the benefit to the amount of said claim under its agreement heretofore made with the claimant, and that the labor, material and fixtures therein specified are all satisfactory to said superintendent.

Thereupon the Court being further advised in the premises and upon investigating on their own account also, and finding that the county has received the benefit to the full amount claimed, and

as shown by said Exhibit "A" and finding that the full allowance of said claims would be just.

It is, therefore, ordered by the Court that said offer of the claimant be accepted, and that the agreement by the County to purchase and pay for said fixtures — said County under the contract, as well as the amount due thereon, and shown in said account, and the claim for the same, be, and the same is hereby received, approved, audited, registered and is hereby adjudged to be and is allowed in full, and further ordered that the Court deems the price charged to be fair and reasonable, and the County of Shelby, in the State of Alabama, hereby agrees and promises to pay the Art Metal Construction Company, and the Texas Seating Company, the said sum of Ten thousand, five hundred ($10,500.00) Dollars, together with interest thereon at the rate of six per centum per annum, payable semi-annually, for the property shown in said claim, and at the time and in the manner hereafter set out and shown with said interest from the first day of June 1907; it is ordered that the Judge of Probate and Trustee, A. P. Longshore, certify and deliver proper certificates of indebtedness and County Court House Warrants, drawn on the County Treasurer and signed and sealed in behalf of the County through this Court by its Judge of Probate, and countersigned by the Probate Clerk, as provided in Section 3 of this resolution, and said Judge of Probate shall deliver principal warrants of said county, bearing interest, to said claimants in full payment of the said claim for labor, material and fixtures, all of which having been furnished to the County and are declared
126 necessary by this court to complete said building.

It is further ordered that the interest bearing warrants delivered in payment of said claim shall be drawn upon and be made payable out of the Special County Court House Funds, or any other funds in the treasury not otherwise appropriated, in the event that there should be no funds to the credit of the Special Court House Fund at the time any of said warrants shall become due and payable; that all of said warrants shall have, and are hereby given all the force and effect, and direct binding obligations upon the County of Shelby, as are and have been given the other County Court House warrants heretofore issued to the B. C. Bynum Construction Company, it being expressly understood that this resolution and order of this County is a binding, continuous contract between said County and said Art Metal Construction Company and the Texas Seating Company, and the holders for value of any of the interest bearing coupon warrants issued pursuant hereto, and the warrants and interest coupons annexed to them and issued hereunder, shall in no way ever be cancelled, reduced, impaired or unpaid, and a delivery thereof of them, of any of them, to said Art Metal Construction Company and the Texas Seating Company shall be a waiver by the County or any of its tax payers of all defenses thereto of every nature whatsoever, and the said contract for the purchase of said fixtures, labor, and material as embodied in this resolution is a binding and continuous contract and acceptance of the proposition above made, and shall be in no wise broken and never be im-

paired or hereafter modified or repealed so long as any of said County Court House Warrants and the interest thereon of whatsoever nature, hereby issued, shall remain outstanding or unpaid.

Section 3. Be it further ordered by the Court, that the debt due the above named claimants, and amounting to ten thousand, five hundred ($10,500.00) Dollars, shall be broken into twenty one (21) installments, from one (1) to twenty one (21), both inclusive, all of which installments, together with the interest thereon, said County hereby promises to pay at the time and in the amounts, and in the manner and form hereinafter set out and shown. That the said first installment shall mature February 1, 1908, and the remaining installments shall mature annually thereafter. That said installments shall also compose in the aggregate a portion of the principal and all of the interest which shall fall due upon the
127 debt each year, and said installments shall be subdivided in such a manner as that the principal sum shall be represented by principal warrants and the interest due thereon shall be represented by coupon warrants annexed to them: that said principal warrants shall be dated as of the first day of June, 1907, and shall be twenty two in number, from one (1) to twenty two (22) both inclusive, and shall be of $500.00 denomination each except as hereinafter set out and shown, the said principal warrants and sums of money called for by them upon their face, shall bear interest from the first day of June, 1907, at the rate of six (6) per centum per annum, payable semi-annually, on the first days of February and August of each year, said principal warrants beginning to mature February 1 of the year 1908, and ending *in* February 1st, of the year 1928; said interest shall be evidenced by detachable interest coupons annexed to said principal warrants, and both interest and principal are hereby made payable at the office of the County Treasurer, in Columbiana, Alabama, or at the Banking House named in said warrants; said warrants and coupons shall be made payable to said Art Metal Construction Company and the Texas Seating Company, or bearer, and shall be signed in behalf of Shelby County through this Court by the Judge of Probate and countersigned by the Probate Clerk and said principal warrants shall have affixed to them the official seal of the Probate Judge, provided that said coupons shall not be sealed, but may be signed *for* affixing to them the facsimile lithographed signature of the Judge of Probate and other County officers, and that said warrants and the interest coupons annexed to them, shall represent the Court House debt due for supplying the fixtures and fire proof furnishings necessary to complete and put in order the interior of the new County Court House Building, and when said warrants shall have been so subdivided, as herein ordered, the said principal warrants shall have the following numbers, amounts and maturities, to-wit:

Numbers.	Amounts.		Maturities.
1.	$500.00	Art Metal Construction Company	due Feb. 1, 1908
2.	$500.00	Art Metal Construction Company	due Feb. 1, 1909
3.	$500.00	Art Metal Construction Company	due Feb. 1, 1910
4.	$500.00	Art Metal Construction Company	due Feb. 1, 1911
5.	$500.00	Art Metal Construction Company	due Feb. 1, 1912
6.	$500.00	Art Metal Construction Company	due Feb. 1, 1913

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7.	$500.00	Art Metal Construction Company	Feb. 1, 1914
8.	$500.00	Art Metal Construction Company	due Feb. 1, 1915
9.	$500.00	Art Metal Construction Company	due Feb. 1, 1916
10.	$500.00	Art Metal Construction Company	due Feb. 1, 1917
11.	$250.00	Art Metal Construction Company	due Feb. 1, 1918
12.	$250.00	Texas Seating Company	due Feb. 1, 1918
13.	$500.00	Texas Seating Company	due Feb. 1, 1919
14.	$500.00	Texas Seating Company	due Feb. 1, 1920
15.	$500.00	Texas Seating Company	due Feb. 1, 1921
16.	$500.00	Texas Seating Company	due Feb. 1, 1922
17.	$500.00	Texas Seating Company	due Feb. 1, 1923
18.	$500.00	Texas Seating Company	due Feb. 1, 1924
19.	$500.00	Texas Seating Company	due Feb. 1, 1925
20.	$500.00	Texas Seating Company	due Feb. 1, 1926
21.	$500.00	Texas Seating Company	due Feb. 1, 1927
22.	$500.00	Texas Seating Company	due Feb. 1, 1928

Section 4. Be it further ordered by the Court that the form of said County Court House Warrants and certificates of indebtedness and interest coupons to be annexed to them, with their necessary variations as to claimants, numbers, dates, sums and maturities, together with the endorsements thereon, shall be substantially as follows, to-wit:

UNITED STATES OF AMERICA,
State of Alabama:

Warrant No. ——.
Installment No. ——. $500.00.

County of Shelby.

Court-house Warrant and Certificate.

This is to certify, that the County of Shelby, in the State of Alabama, is justly indebted, and has promised to pay to ————, the sum of Five Hundred Dollars ($500.00) due and payable on the first day of February, 1928, and the Treasurer of said County has been duly, and is hereby authorized, ordered and directed to pay said ————, its assigns, or bearer, the sum of Five Hundred ($500.00) Dollars, in full settlement of the amount hereby evidenced out of the special County Court House fund, levied and created, and to

129 be hereafter levied and created for that purpose, upon the presentation and surrender of this warrant and certificate of indebtedness and maturing coupons at his office in the City of Columbiana, in the state of Alabama, or at the office of Farson, Son & Company, in the city and State of New York, at the option of the holder thereof. It is further certified that this portion of the contract price and the said sum of money hereby representing it allowed thereon, and shown upon the face of this warrant, bears interest by virtue of a valid subsisting contract below referred to, as well as this warrant, at the lawful rate of six per centum (6%) per annum, payable semi annually, hereafter on the first days of February and August of each year, as evidenced by and upon the presentation and surrender of the interest coupons hereto annexed, and until the principal hereof shall have been fully paid.

This warrant has been issued by said County in part payment of the cost of labor and material furnished furniture and fixtures to complete the new County Court House Building for said County, erected within the corporate limits of the City of Columbiana, Alabama, the County seat in and for said County and State, which labor has been actually done, said material actually furnished and advanced to said County, to the extent and amount of this warrant and of the series of warrants of which this is one for said purpose. The validity and legality of the indebtedness represented by this and the other warrants of said series has been, by the Court of County Commissioners of said County, carefully investigated and found to be just, and it has been duly ascertained and determined that the County has received the benefit thereof, and the claim of said indebtedness has been duly audited and allowed by the Court of County Commissioners of said County. This warrant is one of a series of like date, tenor and amount, constituting the twenty-one (21) installments into which the entire contract for providing furniture and fixtures for said Court House is divided, one of said installments being payable on the first day of February in each of the years, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927 and 1928, all of which warrants have been duly issued.

It is hereby certified and recited, that all conditions and 130 things required by the constitution and laws of the State of Alabama to be done precedent to, and in the issuance of this warrant and said series of warrants, have been properly and regularly done, happened and performed in regular and due form and time as required by law; that this and the other warrants, and the interest coupons thereto annexed, aforesaid, are issued in compliance with the terms of the contract entered into *between* said County, and pursuant to valid orders of the Court of County Commissioners of said County; that this warrants and the coupons hereto annexed, are issued for and are conclusive proof of the due fulfillment of the proportionate part of the contract aforesaid represented by the amount of this warrant, and which has become justly payable as herein provided; and that sufficient and proper provision by the levy of one fourth of one per centum special tax annually, a suffi-

cient part of which, when collected, it is covenanted and agreed shall be exclusively applied to the payment of this warrant and the interest coupons thereto annexed, as pledged by said contract and the orders of the Court of County Commissioners of said County, as they severally fall due, has been, and until the full payment of the principal and interest thereof, will continue to be duly and promptly made sufficient to pay the amount evidenced by this warrant, when, and as the same matures.

In witness whereof the County of Shelby, in the State of Alabama, through the Court of County Commissioners, has ordered and caused this warrant to be signed by the Judge of Probate of said County and his official seal to be hereto affixed, and countersigned by the Probate Clerk and the interest coupons annexed to be signed by the lithographed fac simile signature of said Judge of Probate, as of the first day of June, A. D. 1907.

COUNTY OF SHELBY, ALABAMA,

By ————,

Judge of Probate of Shelby Co., Ala.

Countersigned:

————,

Probate Clerk.

131 On the First Day of August, 1907,

Installment No. —. $5,00.

The County of Shelby,

In the State of Alabama, will be due, and the Treasurer of said County is hereby directed and ordered to pay —— ——, assigns or bearer, $5,00 out of the special court House funds, at the office of the County Treasurer, at Columbiana, in said State and County, or at the office of Farson, Son & Company, in the city and State of New York, at the option of the holder hereof, being interest due said contractor on the sum of money and portion of the contract price represented by Court House Warrant No. —.

(Signed) ——— ———,

Judge of Probate, Shelby County, Alabama.

Registered against the special Court House Fund of Shelby Co., Alabama, and allowed to —— ——.

——— ———,

County Treasurer.

This interest sold and this debt and coupon warrant representing it is assigned for value received to —— —— or bearer.

——— ———,

Contractor.

Certificate of Identification.

I, A. P. Longshore, Judge of Probate and Trustee, do hereby certify that the within warrant is one of the warrants held in trust by me for delivery upon the allowance of the debt represented by it, and upon the order of the Court of County Commissioners of Shelby County, Alabama, and that I have duly and regularly delivered the same to —— —— in strict conformity with all legal requirements, including my agreement of trust, together with the annexed interest coupons.

(Signed) —— ——,
Judge of Probate and Trustee.

132 *Registration.*

Office of County Treasurer, Columbiana, Alabama.

STATE OF ALABAMA,
Shelby County:

Warrant No. —.
Installment No. —. $500.00.

This warrant, and the annexed coupons presented for registration and registered as and against the Special County Court House fund of Shelby County, Alabama, and allowed to — on account of its contract for providing the necessary labor and material furnished, and the furniture — fixtures to complete the Court House of Shelby County, pursuant to an order of allowance duly made by the Court of County Commissioners of said County of Shelby, Alabama.

Witness my lithographed fac simile signature to the annexed interest coupons, and my hand to this warrant, this the — day of ——, 1907.

—— ——,
County Treasurer.

Assignment.

This is to certify that the Art Metal Construction Company has received the principal County Court House Warrant, and the interest coupons annexed thereto, from Shelby County, Alabama, and its Judge of Probate, as above written, for value received, it hereby assigns, subrogates and delivers to —— ——, or bearer, all right, title and interest it has in and to the same, and contract debt due it, with interest thereon by said County, which is represented by the amounts called for by this principal warrant and the annexed coupons, and said assignee, or bearer, is hereby subrogated to all claims, liens, rights or title, whether in law or equity, which are or may be secured to it in said contract and hereby authorizes the said assignee, or bearer hereof, to collect the same and give full receipt and acquittance therefor in the name of the undersigned.

Witness the lithographed fac simile signature of the said Company assigning the annexed interest coupon warrants, and the hand of the General agent of the undersigned assigning this principal warrant.

ART METAL CONSTRUCTION COMPANY,
By —— ——, *Its General Agent.*

133 Section 5. Whereas, said Shelby County has agreed and promised to pay for the completion of said Court House, as hereinabove shown, the sum of Ten thousand, five hundred ($10,500.00) Dollars in annual installments, together with the interest thereon at the rate of six per centum per annum, payable semi annually, and whereas, said County has agreed and contracted that said interest shall become as much a part of the contract price as the principal sum of said contract price has or may become in view of the fact that said County has not the funds, and will not have the funds in its County Treasury to meet and pay for said debt and claim when allowed in the year 1907, but may pay the same by taxation and funds created by taxation each year hereafter, as herein shown, and whereas, said interest shall be paid and is agreed to be paid in installments semi annually on the first day of February and August of each year.

Now, therefore, it is ordered that the entire amount of interest and principal combined, which said County shall pay out during any one year — this agreement (which has been made under and by virtue of the law of Alabama and as proclaimed and announced by the Supreme Court of the State of Alabama, April 18th, 1905 in the case of Tally et als. vs. the Court of County Commissioners of Jackson County, et al. and found in Vol. 39 page 167 of the Southern Reporter as follows:

The Total Annual Installments, Including Principal and Interest.

Principal and interest maturities.	Semi-annual interest.	Annual principal.	
Due August 1, 1907...	$105.00	None.	
Due February 1, 1908...	$315.00	Feb'y 1, 1908	$500.00
Due August 1, 1908...	$300.00		
Due February 1, 1909...	$300.00	Feb'y 1, 1909	$500.00
Due August 1, 1909...	$285.00		
Due February 1, 1910...	$285.00	Feb'y 1, 1910	$500.00
Due August 1, 1910...	$270.00		
Due February 1, 1911...	$270.00	Feb'y 1, 1911	$500.00
Due August 1, 1911...	$255.00		
Due February 1, 1912...	$255.00	Feb'y 1, 1912	$500.00
Due August 1, 1912...	$240.00		
Due February 1, 1913...	$240.00	Feb'y 1, 1913	$500.00
Due August 1, 1913...	$225.00		
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Due February 1, 1914...	$225.00	Feb'y 1, 1914	$500.00
Due August 1, 1914...	$210.00		

Principal and interest maturities.	Semi annual interest.	Annual principal.	
Due February 1, 1915...	$210.00	Feb'y 1, 1915	$500.00
Due August 1, 1915...	$195.00		
Due February 1, 1916...	$195.00	Feb'y 1, 1916	$500.00
Due August 1, 1916...	$180.00		
Due February 1, 1917...	$180.00	Feb'y 1, 1917	$500.00
Due August 1, 1917...	$165.00		
Due February 1, 1918...	$165.00	Feb'y 1, 1918	$500.00
Due August 1, 1918...	$150.00		
Due February 1, 1919...	$150.00	Feb'y 1, 1919	$500.00
Due August 1, 1919...	$135.00		
Due February 1, 1920...	$135.00	Feb'y 1, 1920	$500.00
Due August 1, 1920...	$120.00		
Due February 1, 1921...	$120.00	Feb'y 1, 1921	$500.00
Due August 1, 1921...	$105.00		
Due February 1, 1922...	$105.00	Feb'y 1, 1922	$500.00
Due August 1, 1922...	$90.00		
Due February 1, 1923...	$90.00	Feb'y 1, 1923	$500.00
Due August 1, 1923...	$75.00		
Due February 1, 1924...	$75.00	Feb'y 1, 1924	$500.00
Due August 1, 1924...	$60.00		
Due February 1, 1925...	$60.00	Feb'y 1, 1925	$500.00
Due August 1, 1925...	$45.00		
Due February 1, 1926...	$45.00	Feb'y 1, 1926	$500.00
Due August 1, 1926...	$30.00		
Due February 1, 1927...	$30.00	Feb'y 1, 1927	$500.00
Due August 1, 1927...	$15.00	Feb'y 1,	
Due February 1, 1928...	$15.00	Feb'y 1, 1928	$500.00

Be it further ordered by the Court that the sums represented by each of the foregoing installments be and the same are hereby voted, appropriated and set aside out of the Special County Court House Funds which have been and which will be hereafter levied, created and collected in each of the foregoing named years, and when levied and collected said sums of money shall be set apart and used exclusively by the Treasurer of said County for the sole purpose of paying off the above and foregoing installments, composed of both the principal and interest as hereinabove shown.

135 It is, therefore, ordered by the Court that there be and thereby is hereby levied a special County Court House tax of one fourth of one per centum, or so much as may be necessary to raise said amount of principal and interest, upon all of the taxable property of Shelby County as assessed for state taxation for the years 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, and 1928, and any succeeding years that may be found necessary to fully pay the principal and interest of said warrants, and the said County and said Court of County Commissioners pledges itself and themselves hereby to levy so much of said tax as may be necessary to meet and pay for said installments, both principal and interest, according

as any of them become due and mature, and the principal debt of Ten thousand, Five hundred ($10,500.00) Dollars, and the interest thereon at six per centum per annum, payable semi-annually shall have priority over any other debt of Shelby County subsequently contracted; and it is agreed that said principal tax of one fourth of one per centum, or so much thereof as may be necessary, will be levied from year to year, or annually hereafter, and that the foregoing debt and the interest thereon created by this resolution and contract, shall be, and is a prior claim or lien upon the Special County Revenues created and collected, or to be hereafter created and collected by the levy of said special tax, or any part thereof, as authorized by Section 215 of Article XI of the Constitution and an act of the Legislature of the State of Alabama, approved September 30, 1903, and found on page 307 of the General Acts of the Legislature of the year 1903 and Chapter 31 of the Code of 1896.

And the County agrees not to appropriate or levy any portion of said special tax, or special tax fund, for any other purpose until a sufficient amount of said special tax has been first levied, collected and appropriated each year to pay *said special tax has been first levied, collected and appropriated each year to pay* the installment falling due annually hereafter by virtue of this contract, and the Special Tax Revenues shall be applied and collected exclusively to the annual installments and annual payments above set out and agreed to in this contract, provided that any surplus arising each year, if any may be applied to any other lawful purpose, pro-
136 vided, however, that said County Court House Debt of Ten thousand, five hundred, ($10,500.00) Dollars is both a special charge upon said special tax fund and revenue, and also the general obligation of Shelby County, and if for any reason there should be no money in the County Treasury to the credit of the special County Court House fund at the time any of said warrants and coupons become due then any of said warrants and coupons shall be payable out of the general fund, or other funds, in the County Treasury not otherwise appropriated, until the Treasurer has sufficient special revenue with which to pay said warrants. That the Treasurer of said County shall upon the maturity of the foregoing annual installments make immediate payment of the same to said contractor, his assigns or the holders of any warrants hereof, the production and surrender of said warrants and coupons attached to them shall be the receipt of the County Treasurer and evidence of his payment of the same.

Be it further ordered by the Court that the Contract made by the County with G. W. L. Smith, attorney of Brewton, Alabama, for the preparation of this contract, and other services which he shall itemize and file with the court, be and the same is hereby confirmed, and the amount due him, to-wit: $50.00 for lithographing and printing and supervising said lithographing and printing of said warrants and the further sum of $500.00 due him for performing the services herein stated, and for which he was employed by the County, be and the same is hereby audited and allowed in full, and the Judge of Probate is ordered and directed to draw a warrant, payable out of the

general fund upon the County Treasurer, payable to said Smith, and bearing 8% interest until said warrant is fully paid.

Ordered by the Court that the Probate Judge shall record this resolution and contract in full upon the Minutes of this Court and receive the compensation at the rate heretofore allowed him for such services, to-wit: 15 cents per hundred words; that the County Treasurer for registering said warrants herein authorized shall receive for his compensation such sum as the Court may allow according to law. It is further ordered that said warrants and coupons shall be printed and lithographed at the expense of the County under supervision of said G. W. L. Smith, and all foregoing minutes of this Court in
137 regard to Court House Business, and all warrants and coupon warrants heretofore allowed and issued in payment of debts due or contracted for the erection of said new County Court House building, be and the same are hereby confirmed and declared to be lawful, just and valid in all respects and in every manner.

The foregoing resolution and minutes of the Court having been duly read and understood, the same are hereby agreed to, approved and confirmed by the said Art Metal Construction Company and the Texas Seating Company in open court and by the Commissioners' Court of Shelby County, Alabama.

In testimony whereof the members of said Court have hereunto set their hands and seals the day and year first above written, this the 3rd day of September, 1907.

A. P. LONGSHORE, [SEAL.]
Judge of Probate.
J. E. DYKES, [SEAL.]
Commissioner.
O. COST, [SEAL.]
Commissioner.
PLEASANT SHAW, [SEAL.]
Commissioner.
W. H. O'BARR, [SEAL.]
Commissioner.

STATE OF ALABAMA,
Shelby County:

Probate Office and Office of the Court of County Commissioners of said County.

I, A. P. Longshore, Judge of Probate, of said County and the presiding officer and principal Judge of the Court of County Commissioners of Shelby County, in the State of Alabama, and the custodian of its records, do hereby certify that the above and foregoing words and figures constitute and are a true and correct copy of a resolution adopted and passed by said Court of County Commissioners and recorded in full upon the minutes of said Court as the same purport to be.

Witness my hand and official seal, this the 3rd day of September, 1907.

A. P. LONGSHORE,
Judge of Probate of Shelby County, Alabama.

138 STATE OF ALABAMA,
Shelby County:

Office of the Board of Revenue and the Clerk of said Board.

I, Oliver Miles, Clerk of the Board of Revenue of Shelby County, Alabama, do hereby certify that the foregoing words and figures on pages 1 to 23, inclusive, are a true and correct copy of the minutes of the Court of County Commissioners of Shelby County, Alabama, as the same appears in the records of the proceedings of said court in my custody in Book Two at page- 217 to 240, inclusive, thereof.

In witness whereof I have hereunto set my hand on this the 24 day of February, 1916.

OLIVER MILES,
Clerk of the Board of Revenue of Shelby County, Alabama.

STATE OF ALABAMA,
Shelby County:

The County Court of Shelby County, at Columbiana, Alabama.

On the Law Side of the Court.

No. —.

FARSON, SON & COMPANY, Plaintiff,
vs.
J. S. BIRD, as County Treasurer, Defendant.

Order of Court.

The foregoing petition for a writ of mandamus, filed by the plaintiff in the above stated cause, having been duly read, considered and understood by the Court, it is therefore declared that the Court is of the opinion that the plaintiff is entitled to the writ of mandamus prayed for, therefore—

It is ordered and adjudged by the Court that the plaintiff have the alternative writ of mandamus issued as prayed for and directed to said Joe S. Bird, as County Treasurer of Shelby County, Alabama, commanding him to appear before this court on the 23rd day of March, 1916, and show cause why you should not be required to pay to said Farson, Son & Company said warrants amounting to $1625 out of said Special Tax Fund of $12000.00 in his hands derived from the levy in 1915 of said Special County tax of one fourth of one per centum, and the Clerk will issue said writ accordingly.

Dated this the 3rd day of March, 1916.

E. S. LYMAN,
Judge of said Court.

Filed March 3rd, 1916.

8—746

139 STATE OF ALABAMA,
Shelby County:

The County Court of Shelby County, at Columbiana, Alabama.

On the Law Side of the Court.

No. 1021.

FARSON, SON & COMPANY, Plaintiff,

vs.

J. S. BIRD, as County Treasurer, Defendant.

Alternative Writ of Mandamus.

To the Honorable Joe S. Bird, as County Treasurer of Shelby County, Ala.:

Whereas, on the 3rd day of March, 1916, Farson, Son & Company, the plaintiff in the above stated cause, presented to this Court a petition for a writ of mandamus to compel you, said Joe S. Bird, as County Treasurer of Shelby County, Alabama, to pay said plaintiff,—(out of the $12,000.00 now in your hands as County Treasurer of said County and which sum of Money was collected and placed in your hands by the officers of said county on account of the levy of the Special County Tax in 1915 of one fourth of one per centum, authorized by Section 215 of the Constitution and sections 134 and 138 of the Code of 1907) the sum of $1,565.00, evidenced by County Court House Warrants, due February 1, 1916, issued by said County and registered in the books of your office which warrants are held by plaintiff.

And, whereas, in the opinion of the County Court of Shelby County, Alabama, and the Honorable Edward S. Lyman, Judge of said Court, said petition states a proper and sufficient case for said writ of mandamus and — has directed the Clerk to issue the same.

Now, therefore, these are to command you, said Joe S. Bird, as Treasurer of said County, and you are hereby commanded to appear before Hon. E. S. Lyman, Judge of said Court, and before said court on the 23rd day of March, 1916, and show cause why you should not be required to pay said Farson, Son & Company, said warrants amounting to $1,565.00 out of said special Tax fund of $12,000.00 in your hands derived from the levy in 1915 of said special County tax of one fourth of one per centum.

Witness the seal of said court and my hand hereto on this the 3rd day of March, 1916.

J. R. WHITE,
Clerk of said Court.

Filed March 3rd, 1916.

140 STATE OF ALABAMA,
Shelby County:

I, J. H. Fulton, Sheriff of Shelby County, Alabama, do hereby certify that I, on the 3rd day of March, 1916, served the within writ and a copy of said petition on said Joe S. Bird, County Treasurer of Shelby County, Alabama.

Witness my hand, this the 3rd day of March, 1916.

J. H. FULTON,
Sheriff of Shelby County, Alabama.

Amendment to Petition.

That your petitioners are the owners and holders of $2,655.00 of principal and interest county warrants that are valid and legal in all respects issued by the Court of County Commissioners of Shelby County, Alabama, on claims for the erection, furnishing and seating the new county court House building of said County on claims duly audited and allowed according to law by said court in the years to-wit: 1905, 1906, 1907 and like manner *is* the owner- and holder- of the same kind of County Court House Warrants maturing and amounting to $1,000.00 of principal warrants, due February, 1917, and $960.00 of interest warrants, due February 1, 1907, and $930.00 of interest warrants, due August 1, 1917; pursuant to contract made with B. C. Bynum Construction Company February 21, 1907, and also the holder- of like warrants issued in the same manner by said court and county for the sum of $500.00 principal, due February 1, 1917, and $180.00 interest warrants, due February 1, 1917, and $165.00 interest warrants, due August 1, 1917, issued pursuant to contract made by said County September 3, 1917, with the Art Metal Construction Company and the Texas Seating Company.

That all of said warrants were duly registered in the year 1907 against the special tax fund of one-fourth of one per centum of said county authorized by section 215 of the Constitution and Code Sections 134, 138 and 139 and the orders of said court and the books of the county treasury show that all of said court house warrants are duly registered against said special tax fund and all of said warrants are registered and numbered in the order in which they were presented and registered in such a manner as to make the
141 order of their registration the order of their maturity and payment, both principal and interest, along with the other entire Court House debt and warrants evidencing the same and said $12,000.00 now in the hands of said County Treasurer levied and collected by said County by the special tax of one-fourth of one per centum in the year 1915 is in said special tax fund now in the hands of the County Treasurer and is subject to and available for the payment of said petitioners' warrant, due February 1, 1916.

That said tax levy, made or pretended to be made by the Board of Revenue in the year 1915 is null and void so far as the plaintiffs'

rights and warrants are concerned and in so far as said levy is an attempt to divert the County revenues from the Court House debt and the payment of your petitioners' warrants and said County Treasurer should use said $12,000.00 derived from said tax levy for the purpose of paying off your petitioners' warrants and all other Court House warrants falling due February 1, 1916, and the remainder of said money to any other lawful purpose; that said petitioners' warrants are registered against said special fund and the proceeds derived therefrom, to-wit: said $12,000.00 and said County Treasurer has failed and refused to pay off your petitioners' warrants and said court house warrants in the order of their registration.

That petitioners are the assignees and owners of said warrants and have all the rights of the original contractor who erected and furnished said Court House Building and *is* subrogated to said Court House contract and all rights and benefits thereunder accruing and all of your petitioners' warrants are a prior claim or lien on said special tax fund and the proceeds derived therefrom including said $12,000.00 now in the hands of said defendant, County Treasurer.

The foregoing is an amendment to Section 12 of said petition and said amendment is made by leave of the Court first had and obtained and after having served a copy of same on the defendant and *their* attorney of record, —— ——.

Your petitioners further show and allege that they are before this Court in the position of a judgment creditor, attempting and seeking the enforcement and collection of said judgment.

That under the terms and provisions of the orders of said Commissioners' court and the Court House contract made in 1905
142 and 1907 and referred to in section 2 of Plaintiffs' petition, said County agreed that all the proceeds which should be derived from year to year by levy and collection of the County Special Tax of one-fourth of one per centum should be kept by the County Treasurer separate and apart from other County funds and applied exclusively to the payment of your petitioners' warrants and the other Court House Warrants registered against said fund, that said Treasurer Bird and said County has failed to comply with this provision of said contract and a specific performance of the same is demanded.

That all of said orders of the Commissioners' Court — said Court House contract and the orders auditing and allowing the Court House claims and the issuance of plaintiff's warrants and all of said court house warrants are hereto annexed marked Exhibit "G" and made a part of this petition.

G. W. L. SMITH,
Attorney for Petitioner.

Copy served on defendant County Treasurer Bird and his attorney —— —— at the time this amendment was filed, and before.

——,
Attorney for Petitioner.

That the assessed valuation of this County of Shelby in the year 1915 last made for state taxation was and is the sum of $8,620,-210,00 as shown by Exhibit "F" hereto annexed and made a part of this petition; that all of said proceedings of the Court of County Commissioners of said County in 1905, '6 and '7 showing the contracts and orders of Court by the terms of which said Court house building was erected and furnished and said court house warrants allowed and issued are set out and shown in special exhibit marked "E," "F" and "G," all of which is made a part of this petition.

That all of the acts and doings of said County and said Board of Revenue and said County Treasurer, Bird, have been done, contrary to the rights of your petitioner and said acts and doings have greatly impaired and lessened the value of complainant's warrants and the obligations made by said County pursuant to which said warrants were issued contrary to Article One, Section Ten of the Constitution of the United States and Sections 22 and 95 of the Constitution of the State of Alabama.

143 Your petitioners further allege that the bond required by law to be made and filed by said County Treasurer Joe S. Bird, has been duly made and filed and recorded on the 16th day of November, 1912, in the Probate office of Shelby County in Official Bond Record Vol. #3 at page 176 and that the words and figures of said bond so recorded is herein set out and shown in Exhibit "H" hereto annexed and made a part of this petition.

Your petitioners allege that said Joe S. Bird, and his said sureties, I. J. Davis, J. A. Thompson, W. L. Bentley, J. G. Davis, J. C. Harper, W. P. Gilbert, H. M. Norris, L. R. Kendrick, W. L. Seale, H. A. Whatley, T. L. Kendrick, O. Cost, R. L. Johnson, I. E. N. Johnson, J. T. Finley, D. A. Whitfield, are all of them insolvent, that is to say that they nor any of them are sufficiently responsible financially to answer to any judgment which this Court might render against them on a motion made against them or any of them pursuant to Code section 5938 and said Bird and his said sureties on said bond are not able to pay the amount of your petitioners' claim with interest from the time of the demand upon said County Treasurer and ten per cent damages thereon and cost, or any part of said claim, and that a judgment rendered in favor of your petitioners under section 5938 according to your petitioners' best information and belief would be valueless or of doubtful value and would be inadequate and insufficient, and that said motion and right to said motion is inadequate and insufficient and on this account the writ of mandamus is the only adequate remedy which your petitioner has in this court.

However if your petitioners are mistaken in this matter then in that event your petitioners request the Court to deem and consider this suit and this petition as a motion against said Treasurer, Joe S. Bird, and the above named sureties on his said official bond for a judgment for the full amount of your petitioners' warrants and claims against said county and that the same shall be deemed regular in all respects as a motion against said sureties and said County Treasurer herein named under Section 5938 of the Code.

Therefore, your petitioners do move that this court render a judgment in this case against said Joe S. Bird, individually, and as County Treasurer of Shelby County, Alabama, and against
144 the said sureties upon his official bond for the sum of $2,655.00 and interest thereon from February 9th, 1916, and ten per cent damages and costs, but with permission of the Court the plaintiff desires to remit said ten per cent damages for the reason that said Bird and the plaintiffs in this case are desirous only of seeking a method whereby the Court may determine the legal question involved and whether under the law said Bird should pay said money to your petitioners or not.

G. W. L. SMITH,
Attorney for Petitioner.

Sworn to and subscribed to before me, on this the 23rd day of March, 1916.

J. R. WHITE,
Clerk County Court of Shelby County.

EXHIBIT "H."

Official Bond Record of Shelby County, Alabama, Vol. 3, Page 176. Official Bond of Joe S. Bird.

Bond.

THE STATE OF ALABAMA,
Shelby County:

Probate Court, November 11th, 1912.

Know all men by these presents, that we, Joe S. Bird, I. J. Davis, J. A. Thompson, et al. are held and firmly bound unto the State of Alabama in the sum of Twenty seven thousand dollars for the payment of which, well and truly to be made and done we bind ourselves and each of us, for our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this the 11th day of November, 1912.

The condition of this obligation is such, that, whereas, the above bound Joe S. Bird, has been elected County Treasurer in and for said County and State, now, therefore, if the said Joe S. Bird shall faithfully perform all the duties which are or may be by law required of him as such County Treasurer during the time he continues in said office or discharges any of the duties thereof then this obligation shall be null and void, otherwise to remain in full force and effect.

And we and each of us hereby waive all rights of claim of
145 exemption as to personal property we or either of us have now or may hereafter have under the constitution and laws of Ala-

kana, and we hereby severally certify that we have property free from all encumbrance to the full amount of the above bond.

Witness our hands and seals this 11th day of November, 1912.

JOE S. BIRD. [L. S.]
I. J. DAVIS. [L. S.]
J. A. THOMPSON. [L. S.]
W. L. BENTLY. [L. S.]
J. G. DAVIS. [L. S.]
J. C. HARPER. [L. S.]
W. P. GILBERT. [L. S.]
H. M. NORRIS. [L. S.]
L. R. KENDRICK. [L. S.]
W. J. SEWELL. [L. S.]
W. L. SEALE. [L. S.]
H. A. WHATLEY. [L. S.]
T. L. KENDRICK. [L. S.]
O. COST. [L. S.]
R. L. JOHNSON. [L. S.]
I. E. N. JOHNSON. [L. S.]
J. T. FINLEY. [L. S.]
D. A. WHITFIELD. [L. S.]

Taken and approved by me this the 16th day of November, 1912.

A. P. LONGSHORE,
Judge of Probate.

Oath of Office.

THE STATE OF ALABAMA,
Shelby County:

I, Joe S. Bird, solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Alabama, so long as I continue a citizen thereof and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter to the best of my ability, so help me God.

JOE S. BIRD.

Sworn to and subscribed before me this 16th day of November, 1912.

A. P. LONGSHORE,
Judge of Probate.

Dueling Oath.

THE STATE OF ALABAMA,
Shelby County:

I, Joe S. Bird, solemnly swear (or affirm) that I have not
146 directly or indirectly given, accepted or knowingly carried a challenge in writing or otherwise to any person being a citizen

of this State to fight with deadly weapons either in or out of this State, or aided or abetted in the same since I have been a citizen thereof, and that I will not directly or indirectly give, accept or knowingly carry a challenge to any person being a citizen of this State to fight with deadly weapons either in or out of this State or in any manner aid or abet the same during my continuance in office.

JOE S. BIRD.

Sworn to and subscribed before me this 16th day of November, 1912.

A. P. LONGSHORE,
Judge of Probate.

Filed in the office of the Judge of Probate, this the 16th day of November, 1912.

A. P. LONGSHORE,
Judge of Probate.

Filed March 23, 1916.

Demurrers.

Now comes the defendant, by his attorneys, and demurs to the petition as amended, heretofore filed in the above stated cause, and for grounds of demurrer assign- the following:

1. Because the petitioner's remedy, if any it has, is not by writ of mandamus.

2. Because it doth plainly appear from the allegations of said petition that the special fund mentioned in said petition as having been raised by the special levy of 25 cents on the $100.00 in the year 1915 was raised for a special purpose other than and not for the purpose of paying the alleged warrants held by the petitioner, and the Court judicially knows that this defendant would violate the criminal law of the State of Alabama if he used said special fund for the payment of said alleged warrants.

3. Because if that part of the Act of the Legislature of Alabama approved September 4th, 1915, entitled "An Act to amend Sections 7, 8, 13, 9, 18 and 22 of an Act entitled, "An Act to Provide for the control, working, maintenance, building and improvement of the public roads of Shelby County, Alabama" (Local Acts 1915, p. 286) which purports to repeal Section 13 of an act of the legis-
147 lature of Alabama approved April 22, 1911, entitled "An Act to provide for the control, working, maintenance, building and improvements of the public roads, etc." is invalid, the special fund now in this defendant's hands should be returned to the Tax Collector of Shelby County to be kept and paid out by him in accordance with Section 8 of said Act, as last amended.

4. Because it doth plainly appear from the allegations of said petition and the exhibits thereto attached that this defendant is without authority of law to pay any part of the special fund in his

hands to the petitioner, and would render himself and his bondsmen liable on his bond if he should do so.

5. Because it doth plainly appear from the allegations of said petition and the exhibits thereto attached and made a part thereof that the levy of the special county tax of one fourth of one per cent (¼ of 1%) per annum in the year 1915, of which Exhibit "B" is a copy, was within the legislative power and discretion of the Board of Revenue of said County, which power and discretion cannot be controlled by writ of mandamus.

6. Because it doth plainly appear from the allegations of said petition and the recitals in Exhibit B thereto attached, which said recitals are no where in the petition denied or controverted, that it was necessary that the constitutional power to levy a special or extraordinary tax on the taxable property of the County was exercised to take care of the emergencies recited in Exhibit B and that the funds so raised from said levy cannot after said levy be used for any other purpose.

7. Because the Court judicially knows that the Court of County Commissioners did not have during the years 1906 and 1907, or at any other time, any authority to bind its successors to make a levy for the year 1915, or for succeeding years, and no legal authority to bind the County of Shelby by contract or otherwise to make said special levy for the payment of warrants held by the petitioner, or in any way to pledge or give a lien upon the funds that might be raised during the year 1915 or subsequent years by a special tax levy for the payment of the warrants held by the petitioner.

8. Because it doth plainly appear from the allegations of said petition that the paper writings or acknowledgements of debt held by the petitioners are not warrants on the County Treasurer, but
118 are merely acknowledgements of a debt payable in the future, at a definite and stated time, with interest, and are in the form of bonds of the County of Shelby, and it nowhere appears in said petition that said bonds were issued after an election by the qualified voters of the County or in accordance with the Constitution and Statutes of the State.

9. Because for aught that appears in said petition there are other outstanding warrants payable out of the special fund mentioned in the petition, issued after but maturing prior to the maturity of petitioner's al-eged warrants.

10. Because it plainly appears that the so-called warrants held by the petitioners were registered with the Treasurer of Shelby County prior to the date on which they were to be paid, and there is no allegation in the petition that after said warrants became payable that they have ever been registered with the Treasurer of Shelby County, or that they have any priority over legally and duly registered warrants against said special fund.

11. Because it doth plainly appear from the allegations of said petition and the recitals in the exhibits thereto annexed that the agreement on the part of the Court of County Commissioners to annually after the date of the contract or contracts mentioned in said petition, levy a special tax for the purpose of paying or taking

care of the warrants held by the petitioner was an attempted abdication by the said Court of County Commissioners of its legislative powers and an attempt to preclude itself or its successors from meeting in the proper way the emergencies that might arise in subsequent years.

12. Because it plainly appears from the allegations of said petition and the recitals of the exhibits thereto attached, that if the contracts mentioned in said petition requiring the subsequent courts of County Commissioners to levy a special tax to take care of or pay the warrants held by the petitioners, if in force, would be a limitation or a diminution of the efficiency of the legislative or discretionary powers of such courts of County Commissioners and an impairment of such powers, which said powers must be transmitted unimpaired to the successors of the Court of County Commissioners who approved or authorized the contracts mentioned.

13. For that petitioner seeks in this petition to recover a ten per cent penalty for the non-payment of the instruments de-
149 scribed in said petition.

14. For that petitioner seeks to recover in his petition for mandamus a ten per cent penalty provided by statute to be recovered by summary judgment against a County officer and his official bond.

15. For that said petition shows on its face that said Joe S. Bird, Treasurer of Shelby County, has no funds in his hands, which are the proceeds from a levy made by the Board of Revenue of Shelby County for the payment of claims of the character sought to be enforced in this petition.

16. For that said petition seeks to have the Court require Joe S. Bird, Treasurer of Shelby County, to pay to said petitioner claims described in said petition out of funds, which affirmatively show in said petition to have been derived from a levy by the Board of Revenue of Shelby County, Alabama, for road and bridge purposes alone.

17. For that said petitioner seeks to require Joe S. Bird, Treasurer of Shelby County, to pay claims set out in said petition out of funds levied by the Board of Revenue of Shelby County, for a different purpose.

18. For that said petitioner seeks to require Joe S. Bird, Treasurer of Shelby County, to pay the claims named in said petition which purport to be for public buildings erected for the County, out of funds derived by levying a tax for road and bridge purposes alone.

19. For that said petitioner seeks to have the Court to require Joe S. Bird, Treasurer of Shelby County, to pay a claim out of funds not levied for such purpose.

RUSHTON, WILLIAMS & CRENSHAW.
W. L. ACUFF.
W. W. WALLACE.

20. The petition shows on its face that the funds sought to be reached are funds which are by law required to be collected and kept by the Tax Collector of the County.

21. The petition shows on its face that it seeks to have the County Treasurer pay out funds that under the law he has no custody of.

22. The petition shows on its face that the funds sought to be reached are funds which under local acts of Alabama of 1915 page 285 are to be held and paid out by the Tax Collector, and if such funds are in the hands of the Treasurer they should be turned 150 over to the Tax Collector and not to the petitioner.

RAY RUSHTON,
W. W. WALLACE,
W. L. ACUFF,
Att'y- for Def't.

Filed March 23, 1916.
Refiled to petition as amended April 29, 1916.

Additional Demurrers.

Comes the defendant in the above styled cause and with leave of the Court first had and obtained, files the following additional demurrers to the petition, and each count thereof, separately and severally, and for grounds of demurrer assign- the following:

23rd. For that petitioner seeks to join petition for mandamus and motion for summary judgment in one and the same proceedings.

24th. For that petitioner asks that if petition for mandamus be not his proper remedy that said petition be considered by the Court as a motion for summary judgment.

W. L. ACUFF
W. W. WALLACE,
Attorneys for Defendants.

Filed March 23, 1916.
Refiled to petition as amended April 29, 1916.

Motion.

The plaintiff moves the Court to discontinue the case as to all parties not served and proceed to judgment against those on whom the notice has been executed, namely: Joe S. Bird, as County Treasurer. This motion as to discontinuance being made under section 2502 of the Code as amended on page 605 of the General Acts of 1915 as was made and stated by plaintiff's counsel at the argument on demurrers.

G. W. L. SMITH,
Attorney for Plaintiff.

Let this paper be filed by the Clerk and entered as of the date of argument, namely, March 24, 1916, and filed of that date.

E. S. LYMAN, *Judge.*

Filed March 24, 1916.

151 *Amendment to Petition.*

Comes the plaintiff in the above stated cause and by leave of the Court first had and obtained and after serving a copy of this amend-

ment on the attorneys for the defendant, said plaintiffs further amend his petition and motion heretofore filed in said above named cause by adding to section 14 that said Joe S. Bird and the sureties upon his official bond are insolvent; they cannot be made to respond in damages or to pay any judgment which may be rendered against them by motion made against them or any of them pursuant to Code Section 5938 and said Bird and said sureties cannot be made by proceedings under said motion to pay your petitioners and movants the money now held by said Bird as County Treasurer and apply it to the payment and satisfaction of plaintiff's warrants and said Bird and his sureties under proceedings and suit by said motion cannot be made to pay the amount of your petitioners' claim with interest from the time of the demand made upon said County Treasurer and ten per cent (10%) damages thereon and costs or any ppart thereof and that any judgment rendered in favor of your petitioners against said Bird and his sureties pursuant to motion made under section 5938 would be useless and valueless and said judgment could not be collected or enforced; that the proceedings by motion against defendants is inadequate and insufficient and that the only method whereby plaintiffs can reach the money of said county now in the hands of said Bird, County Treasurer and subject it to the payment of plaintiffs' warrants is by writ of mandamus to compel Bird to perform his legal duty of paying said money in his hands to plaintiffs in satisfaction and settlement of said County warrants; but if the law forbids the writ of mandamus to issue to a county treasurer under all circumstances whatsoever, then in that event;—

All requests and all prayer- for the writ of mandamus in said petition and all reference to same *is* hereby stricken out of said petition and the Court is requested to consider and deem said petition as a complaint and a motion against said Bird and the sureties upon his bond to pay said sum in full of plaintiffs' claim and the interest thereon out of said $12,000.00 now in his hands as County Treasurer; and the petitioners move the Court for judgment against said Bird and his sureties for the amount of said claim with in-
152 terest thereon and costs, plaintiff- being the assignee- in writing of said warrants and the same having been duly audited and allowed as required by law.

G. W. L. SMITH,
Attorney for Petitioners.

Filed April 29, 1916.

Executed this 20 day of April, 1916 on J. S. Bird, Treasurer, by leaving a copy of within with W. L. Acuff, Attorney for J. S. Bird.

J. H. FULTON, *Sheriff.*
By J. M. LEONARD, JR., *D. S.*

Judgment Entry.

No. 1021.

FARSON, SON & COMPANY, Plaintiff,

vs.

JOE S. BIRD, as Treasurer of Shelby County, Defendant.

Mandamus.

April 29th, 1916.

Now on this the 29th day of April, 1916, came the parties by their respective attorneys and the petitioner is allowed to amend his petition by amendment in paper writing this day filed, against the objection of the defendant, and to this ruling of the Court defendant duly excepts. Thereupon the Court having heard and understood defendant's demurrers heretofore filed to the petition as first amended and now refiled to the petitioner as last amended: It is considered, ordered and adjudged by the Court that the defendant's said demurrers so refiled to the petition as last amended be and the same are hereby sustained. Whereupon the petitioner declines to amend further, and defendant moves the Court to deny the prayer of the petition and to dismiss said petition: The Court having heard and understood said motion: It is considered, ordered and adjudged by the Court that said motion be and the same is hereby granted, and the prayer of the petition be and the same is hereby denied and that the petition be and the same is hereby dismissed out of this Court, and the defendant, Joe S. Bird as Treasurer of Shelby County, is commanded to go hence without day and have and recover of the petitioner, Farson, Son & Company, the costs in this behalf expended, for which let execution issue; and to this ruling of the Court the petitioner duly excepts and gives notice of appeal.

153 *Prayer for Appeal.*

Comes the plaintiff in the above stated cause and files a written statement setting out the parties and the Court and states that said plaintiff takes an appeal to the Supreme Court of Alabama from the judgment rendered in the above stated cause.

Witness, this 15 day of May, 1916.

G. W. L. SMITH,
Attorney for Plaintiff.

Filed May 16, 1916.

154 *Appeal Bond.*

THE STATE OF ALABAMA,
Shelby County:

County Court of Shelby County.

Know all men by these presents, That we, Farson, Son & Company and the Fidelity & Deposit Company of Maryland are held and firmly bound unto J. S. Bird, as County Treasurer, in the sum of Five Hundred & 00/100 Dollars for the payment of which, well and truly to be made, we bind ourselves, and each of us, our heirs, executors and administrators, jointly, severally, and firmly by these presents and as part of this undertaking we hereby waive all our rights under the Constitution and Laws of the State of Alabama, to have any of our property, real or personal, exempt from levy and sale in satisfaction hereof.

Sealed with our seals and dated this, the 15th day of May, 1916.

Whereas at the January Term, 1916 of County Court of Shelby County, on, to-wit: the 29th day of April, 1916, the said J. S. Bird, as County Treasurer of Shelby County, Alabama recovered a judgment in said Court against Farson, Son & Company, in the mandamus suit No. 1021 whereby said suit was dismissed and for the cost in that behalf expended; and whereas on this day the said Farson, Son & Company, the plaintiff in said cause as such plaintiff has made application for an appeal from said judgment to the present term of the Supreme Court to be holden of and for said State, to reverse said judgment and also for a supersedeas of the execution of said judgment which has been granted on entering into this bond.

Now; therefore, the condition of the foregoing obligation is such that if the said Farson, Son & Company, shall prosecute its said appeal to effect and satisfy such judgment as the Supreme Court may render in this case, then the said obligation to be null and void otherwise to remain in full force and effect.

FARSON, SON & COMPANY, [L. S.]
By G. W. L. SMITH,
Their or Its Duly Authorized Agent and Attorney.
FIDELITY & DEPOSIT CO. OF MARYLAND, [L. S.]
By R. F. MANLY, *Attorney in Fact.*

Approved this 19th day of May, 1916.
J. R. WHITE, *Clerk.*

Filed May 19th, 1916.

155 *Notice of Appeal.*

THE STATE OF ALABAMA,
Shelby County:

In the County Court of Shelby County.

No. 1021.

FARSON, SON & COMPANY, Plaintiff,
vs.
J. S. BIRD, as County Treasurer, Defendant.

To J. S. Bird, as County Treasurer, or W. W. Wallace and W. L. Acuff, his attorneys of record:

You are hereby notified that Farson, Son & Company the plaintiff in the above entitled cause, has prayed an appeal from the judgment rendered therein by the County Court of Shelby County, Alabama, and having complied with the requirements of the law in such cases, the same has been granted to the present term of the Supreme Court of Alabama.

Given under my hand this the 19th day of May 1916.

J. R. WHITE,
Clerk of the County Court of Shelby County.

Filed May 19th, 1916.

Received in office on this, the 19th day of May 1916.
J. H. FULTON, *Sheriff.*

Executed the within writ by serving a copy on W. W. Wallace, Attorney for J. S. Bird, as County Treasurer.
This the 19th day of May, 1916.

J. H. FULTON, *Sheriff.*

156 Filed Supreme Court of Ala. May 20th, 1916. Rob't F. Ligon, Clerk.

7th Division, 819.

Certificate of Appeal.

I, J. R. White, Clerk of the County Court of Shelby County, hereby certify that in the cause of Farson, Son & Company, Plaintiff v. J. S. Bird, as County Treasurer of Shelby County, Alabama, Defendant, which was tried and determined in this Court on the 29th day of April, 1916, in which there was a judgment in favor of the Defendant, whereby the Mandamus suit was dismissed and for the costs in that behalf expended, *and* the Plaintiff on the 19th day of May, 1916, took an appeal to the Supreme Court of Alabama, to be holden of and for said State.

I further certify that Farson, Son and Company filed security for costs of appeal, to the Supreme Court, on the 19th day of May, 1916, and that Fidelity and Deposit Company of Maryland is surety on the appeal bond.

I further certify that notice of the said appeal was on the 19th day of May, 1916, served on W. W. Wallace as attorney of record for said appellee, and that the amount sued for was One Thousand Five Hundred and sixty-five & 00/100 Dollars.

Witness my hand and seal of this Court, the 19th day of May, 1916.

[SEAL.] J. R. WHITE,
Clerk County Court of Shelby County.

157 THE STATE OF ALABAMA,
Shelby County:

I, J. R. White, Clerk of the County Court of Shelby County, do hereby certify that the foregoing pages numbered from 1 to 146, both inclusive, contain a full, true and correct copy of the papers and records named therein in the cause lately pending in said Court Numbered 1021, Farson, Son & Company vs. J. S. Bird, as County Treasurer, as the same appear and remain of record and on file in this office.

Given under my hand and seal of office at Columbiana, Alabama, this the 19th day of May, 1916.

J. R. WHITE,
Clerk County Court of Shelby County.

158 *Assignment of Errors.*

Comes the Appellant, Farson, Son & Company, into the Supreme Court of Alabama and assigns the following errors in the record of the above stated cause and says that the Court erred in said cause as follows:

1st. Said Court erred in sustaining the demurrers interposed to the petition of Plaintiffs as amended.

2nd. Said Court erred in refusing to grant said petition for writ of mandamus or motion for summary judgment against said defendant, Bird, as County Treasurer, and in making an order dismissing the Plaintiff's petition.

3rd. Said Court erred in rendering the judgment in this case in favor of said defendants and County Treasurer, Bird, and in refusing to render a judgment pursuant to said plaintiff's petition or motion in favor of said plaintiff, Farson, Son & Company.

Witness this the 25th day of May, A. D., 1916.

G. W. L. SMITH,
Attorney for Appellant.

159 Supreme Court of Alabama, Tuesday, May 30th, 1916.

The Court met pursuant to adjournment.

Present:

Hon. John C. Anderson, Chief Justice.
Hon. A. D. Sayre, Associate Justice.
Hon. Ormond Somerville, " "
Hon. W. H. Thomas, " "

7th Division, Shelby County Court.

819.

FARSON, SON AND COMPANY

v.

J. S. BIRD, as County Treasurer.

Come the parties by attorneys, and argue and submit this cause for decision.

Supreme Court of Alabama, Thursday, July 6th, 1916.

The Court met pursuant to adjournment.
Present: All the Justices except Sayre, J.

7th Division, Shelby County Court.

819.

FARSON, SON AND COMPANY

v.

J. S. BIRD, as County Treasurer.

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted and duly examined and understood by the court, it is considered that in the record and proceedings of the County Court there is no error. It is therefore considered that the judgment of the County Court be in all things affirmed without prejudice to other proceedings. It is also considered that the appellant and Fidelity and Deposit Company of Maryland, surety on the appeal bond, pay the costs of appeal of this Court and of the County Court.

160 And it appearing that said parties have waived their right of exemptions under the laws of Alabama, let execution issue accordingly.

161 Jul- 6, 1916.

THE STATE OF ALABAMA,
Judicial Department:

The Supreme Court of Alabama, Special Term, 1916.

7 Div.

819.

FARSON, SON & COMPANY
v.
JOE S. BIRD, as Treas'r, etc.

Appeal from Shelby County Court.

Per *Curiam:*

This is an application for mandamus to compel the treasurer of Shelby county to pay certain county warrants held by petitioners, which warrants are past due.

It is well settled law that mandamus will lie to compel a treasurer to pay a special claim out of a special fund, and in some cases it will lie though an action might be maintained against him for such failure.—Sessions v. Boykin, 78 Ala., 328; Wyker v. Francis, 120 Ala., 520.

There is a class of claims, however, as to which it is held that mandamus will not lie against a county treasurer for failure to pay, even though he have the funds in hand and ought to pay, because our statutes have provided a summary and adequate remedy against the county treasurer and his bondsmen.—Arrington v. Van Houton, 44 Ala., 284; Hines v. Salter, 154 Ala., 248; Norwood v. Goldsmith, 162 Ala., 171; Brown v. Gay-Padgett Co., 186 Ala., 564.

162 The rule announced in the above line of cases is here sought to be avoided, by making the application in the alternative; that is, if mandamus will not lie, that the application or petition be then considered a summary motion such as is provided for by the statute. It is alleged, however, that both the treasurer and his bondsmen are insolvent, and that therefore the summary motion would not be adequate but abortive.

It is unnecessary now to decide whether the application for mandamus and the summary motion may be united, or whether the facts averred here are sufficient to warrant such joinder, if allowable, or whether the insolvency of the treasurer and of all his bondsmen would give the right to mandamus when such right would not otherwise exist; because the case can, and should be disposed of on another ground, which goes, as this record shows, to the rights of the parties, whether the remedy be one or the other of the above mentioned.

Neither remedy is availing, under the facts as here alleged, unless the county treasurer as such has funds in his hands liable

to the payment of the demand, and which he ought, as treasurer, to pay thereon. Mandamus will not lie unless he has funds actually in hand which he ought to apply as payment. He may have wrongfully paid out funds on other demands, which he should have kept and applied exclusively to petitioners' demand; yet this fact would not warrant mandamus unless he has funds actually in hand, and therefore can pay them on petitioners' demand. Mandamus would be useless if he did not have funds in hand with which to pay, and courts never do the useless thing of awarding a mandamus which could not be obeyed. Mandamus will not lie, to make him pay, out of his individual funds or out of public founds not liable to the particular claim or demand sought to be enforced by mandamus. A county treasurer, as such, cannot be compelled by mandamus to pay out of his individual funds or out of the general funds of the county, a claim against a special, and not the general fund. He is liable for breaches of his official duty in the wrongful payment of the county funds, as on claims for which the particular fund was not liable; but the remedy against him is not, and cannot be by mandamus.

163 The real case made by the petition, is that in the years 1905-1907, Shelby county, acting through its governing body, the commissioners' court, which body is clothed with limited legislative, judicial and executive functions, decided to build and furnish an expensive county court-house. To this end the commissioners entered into contracts, chiefly with B. C. Bynum Construction Company, and possibly with other companies in part. The work and materials were to be paid for in interest-bearing county warrants, maturing in annual installments, some of the payments being deferred for several years then to come. The commissioners then agreed to levy annually a special tax of one-fourth of one per cent., as authorized by subdivision "*a*" of section 215 of the Constitution, and by the statutes provided to make the constitutional provisions operative; and that the court-house warrants so issued, together with the interest thereon, should be paid out of this special fund thus raised and to be raised. Subsequently, there was a change of the governing body of the county, from a court of county commissioners to a court or board of revenue, and a consequent change in the personnel of the officers; and instead of carrying out the contract to make the special levy to pay the court-house warrants theretofore issued, and which were then maturing, and would continue to mature for several years in the future, the new officers levied the special tax but for a different purpose—to aid to improve the public roads of the county. And the gist of the petition is, that unless mandamus issue, the proceeds of these last special levies will be applied to the payment of claims other than and subsequent to those of petitioners, to-wit, these claims for the improvement of the public roads.

The allegation as to the breaches of contracts made by the county as to the court-house warrants, and as to the breaches of duty by the officers growing out of such contracts and obligations, is as follows:

"That said board of revenue as now constituted, has ignored or repudiated said road debt and declines to levy *and* tax to pay for the

court-house debt; and has levied in the year 1915 all of said tax of one-fourth of one per centum (¼ of 1%) to pay for the expenses usual and ordinary and incidental to the construction and upkeep of county bridges generally throughout the county and for future bridge debts anticipated at the time the levy was made which
164 levy is shown in Exhibit "D" hereto annexed and made a part of this petition; that on account of the orders of the board and the levy of said tax therein made and set out in Exhibit "D" said J. S. Bird, county treasurer, has refused and still refuses to pay the warrants of your petitioner, or any of the said court-house warrants registered aforesaid and maturing February 1, 1916, but said treasurer has paid on said county road warrants contracted for by A. T. Newell & Brothers since 1911 and registered since 1911 and held by said assignee of said warrants, the sum of $7,050.00 on January 20, 1916; your petitioners fear that all of said $12,000.00 will be paid out by said treasurer to other persons not entitled to the same unless the writ prayed for herein is granted; that in the opinion and according to the advice given your petitioners, said $7,000.00 was wrongfully paid out by said treasurer."

"That said Bird as said treasurer has failed to apply the money and proceeds derived from taxation (from the levy of said county tax of one-fourth of one per centum (¼ of 1%) during the year 1915, to petitioners' warrants amounting to $1,565.00, due February 1, 1916, after demand made upon him after February 1, 1916 to apply said money and pay said proceeds over to your petitioners."

For the purposes of this decision, let us concede that the original contract made by the commissioners and ratified by the county, was a valid and binding contract, and that the warrants issued were valid and properly issued as claims against the county; and that the commissioners, acting for the county, had the power and right to agree to levy the special tax for the special purpose, for the several years in the future; and that the petitioners are the bona fide holders of the warrants described, which are due and payable; and that the county has breached its contract, and that its officers, the board of revenue have breached their duty as alleged: Then, can these breaches be remedied and redressed by a mandamus to compel the county treasurer to pay out of the county treasury money which was collected on and from special levies actually made for other purposes, but which ought to have been made for the purpose of paying off the warrants held by petitioners, if it would be subject to the payment of these warrants?

165 We are clear to the opinion that the wrongs complained of cannot be redressed in this mode in a proceeding, like this, against the county treasurer. The allegation of the petition, that the county treasurer has breached his official duty in failing and refusing to pay to petitioners, on their warrants, funds which were collected from special levies in fact made for other and different purposes but which ought to have been made for the purpose of paying petitioners' warrants, is a pure conclusion of the pleader, and not supported by any facts alleged.

The constitutional provision—subd. "*a*" of Section 215—without

which no such levy could be made, expressly provides that the funds so collected "shall be applied exclusively to the purposes for which the same were so levied and collected." Not to the purposes for which they ought to have been levied and collected, but exclusively to the purposes for which they were in fact levied and collected. To redress the wrongful levy and collection, by requiring the county treasurer to pay out the funds for a different purpose from that for which the levy and collection were actually made, would be to defeat the declared purpose of the Constitution. The county treasurer certainly could not have the power or right to thus revise the actions of the board of revenue and of the tax collector; and surely no court will compel him by mandamus to do that which he has neither the power nor the right to do.

It therefore clearly appears that no relief of any kind can be had against the county treasurer, under the facts as alleged in this petition as originally filed, or as subsequently filed, whether sought by mandamus, or summary motion.

If the facts alleged in this petition are true, they ought to have relief, and the county ought to be required to carry out its contract, or to answer in damages for the breach thereof, if the contract was valid and binding; but the relief must be had by different proceedings and against different officers, or the county itself, and not against the county treasurer. Mandamus may be petitioners' remedy, but under the facts alleged it must be against different officers than the county treasurer. See Tarver v. Commissioners, etc., 17 Ala., 527; Eufaula v. Hickman, 57 Ala., 340; Graham v. Tuscumbia, 146 Ala., 449; Commissioners etc. v. Rather, 18 Ala., 133, 143.

166 Without at all committing ourselves to the rights of appellants against the County of Shelby, or against the county's officers, in other and different proceedings, we are convinced that no proper or appropriate relief can be had in this proceeding, if the facts alleged in the petition are true—and we must of course so treat them on demurrer.

It follows that there was no error in the proceedings in the trial court of which these appellants can complain. The judgment is therefore affirmed, but affirmed without prejudice to other proceedings.

Affirmed.

Anderson, C. J. and Mayfield, Sayre, Somerville and Thomas, JJ., concur.

166½ In the Supreme Court of the State of Alabama, Seventh Division.

Case No. 819.

FARSON, SON & COMPANY, Appellants,
vs.
JOE S. BIRD, as County Treasurer, Appellee.

Appeal from Shelby County Court.

Petition for Writ of Error.

Now comes your Petitioner, Farson, Son & Company, the appellant and plaintiff in the above stated cause and respectfully shows that the Supreme Court of Alabama on the 6th day of July, 1916, rendered a judgment against your petitioner (without prejudice to other proceedings) *any* certain cause therein pending wherein said Farson, Son & Company was appellant and plaintiff and Joe S. Bird as County Treasurer of Shelby County, Alabama, was defendant; That the Supreme Court of Alabama wherein said judgment was rendered against your petitioner is the highest court in the State of Alabama in which a decision in the action referred to herein could be had. That in said action certain rights, privileges and immunities were duly and specially set up and claimed by your petitioner under the Constitution and Statutes of the United States, and the said decision of the Supreme Court of Alabama was against the rights, privileges and immunities so set up and claimed, all of which will more fully and in more detail appear from the assignment of errors filed herewith. Wherefore, and inasmuch as your petitioner feels aggrieved by the final decision of the Supreme Court of Alabama in rendering the judgment against it in this action, it respectfully prays that a writ of error may issue from the Supreme Court of the United States to the Supreme Court of Alabama for the correction of the errors complained of; That an order may be entered fixing the amount of the bond or the supersedeas bond herein; That a duly authenticated transcript of the record of the proceedings herein in said Supreme Court of Alabama of said cause be sent to the
166¾ Supreme Court of the United States; and that the decision and judgment of the Supreme Court of Alabama in the above stated cause may be reversed and annulled.

FARSON, SON & COMPANY,
By G. W. L. SMITH,
Their Attorney, Brewton, Ala.

167 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the

State of Alabama, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Farson, Son & Company, plaintiff, appellant and Joe S. Bird, as county treasurer of Shelby County, Alabama, defendant, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right, privilege, or immunity was claimed under the
168 Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute, commission, or authority; a manifest error hath happened to the great damage of the said Farson, Son & Company, as by its complaint appears, *as by its complaint appears.* We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-seventh day of July (1916), in the year of our Lord one thousand nine hundred and sixteen.

[Seal of the United States District Court, Middle District of Alabama.]

HARVEY, E. JONES,
Clerk of the District Court of the United States for the Northern Division of the Middle District of Alabama.

Allowed by,
JNO. C. ANDERSON,
Chief Justice.

169 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Joe S. Bird, Treasurer of Shelby County, Alabama, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days

from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Clerk of the Supreme Court of the State of Alabama, at Montgomery, wherein Farson, Son & Company are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Thos. C. McLellan, Presiding Associate Justice of the Supreme Court of the State of Alabama, this twenty-seventh day of July, in the year of our Lord one thousand nine hundred and sixteen.

THOS. C. McCLELLAN,
Presiding Associate Justice of the Supreme Court of the State of Alabama, the Chief Justice Being Absent.

On this First day of August, in the year of our Lord one thousand nine hundred and Sixteen, personally appeared J. H. Fulton, Sheriff, before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Joe S. Bird, Treasurer of Shelby County, Alabama.

J. H. FULTON,
Affiant and Sheriff of Shelby County, Alabama.

Sworn to and subscribed the 1st day of August, A. D. 1916.

[Seal County Court of Shelby County, Alabama.]

J. R. WHITE,
Clerk County Court of Shelby County.

170 Filed Supreme Court of Ala. July 27, 1916. Rob't F. Ligon, Clerk.

In the Supreme Court of the State of Alabama, Seventh Division.

Case No. 819.

FARSON, SON & COMPANY, Appellants,
vs.
JOE S. BIRD, as County Treasurer, Appellee.

Appeal from Shelby County Court.

Assignment of Errors and Prayer for Reversal.

Now comes Farson, Son & Company, the above named plaintiff, appellants and files herewith its petition for writ of error and says that there are errors in the record and proceedings of the above entitled cause and for the purpose of having the same reviewed in the Supreme Court of the United States, make the following assignment:

1st. This was a civil action, begun on the 3rd day of March, 1916

by the Plaintiff, Farson, Son & Company, against Joe S. Bird as county treasurer of Shelby County, Alabama by petition for writ of mandamus to compel said County Treasurer to pay over to the plaintiff, Farson, Son & Company $2,655.35, due and unpaid by Shelby County, Alabama, February 1, 1916 on certain interest-bearing county warrants issued to defray the costs of erecting the County Court House building of said county pursuant to certain resolutions and orders and contracts made and entered of record by said county and its court of county commissioners in the years 1905, 1906 and 1907 during the time the construction of said building was going on. Said petition was filed in the County Court of Shelby County.

2nd. Said petition set up all the facts and made all of said ordinances, resolutions and orders made by said county and its Commissioners' Court in 1905, 1906 and 1907 which composed the contracts for the erection of the Court House Building made by Shelby County,—exhibits to said petition, and a part thereof.

3rd. Said petition and the Court House contract ordinances show and provide, among other things:

a. That the total cost of erecting said Court House building was $114,390.00; that a large amount of this sum is not yet due; that this sum by the contract bore interest at six and one-half (6½) and (6%) per centum and that said principal and interest was broken into annual and semi-annual instalments, due 1st
171 day of February and August of each year, etc.; that said annual installments of principal and interest were evidenced by county warrants, duly issued according to law, having the physical appearance of bonds, with coupons representing the interest annexed, but in legal effect and in fact were interest-bearing warrants; That Farson, Son & Company, a banking firm of New York City were the holders and owners in good faith and the assignee in writing of the warrants sued on and past due.

b. That said contract, in order to secure the prompt payment of said warrants, both principal and interest provided that the assignee or holder of said warrants should be subrogated to all rights, liens, title and interest and claims whether in law or equity which were secured to the contractor under said contract and that after the delivery of said warrants to said contractor said county waived all defenses of whatsoever nature it and its county officials might have to the payment of said warrants and the collection of the money due thereon, etc.

c. That said warrants were duly issued pursuant to valid orders of the Commissioners' Court of said county duly auditing and allowing the claims against said county represented by said warrants and that said warrants, principal and interest matured serially, as shown.

d. That the County special tax of one-fourth of one per centum authorized to be levied, devoted, dedicated and pledged by Section 215 of the Constitution of 1901 of Alabama and Code Sections (1405 and 1409 of the Code of 1896) now Sections 138 and 134 of the Code of 1907, was specifically levied and pledged for and during each of the years 1907 to 1930, inclusive to create a special county fund

for the payment of said warrants as provided by Section 211 of the Code of 1907.

e. That said warrants and all of the Court House warrants were the first county claims to be registered against said special tax fund of one-fourth of one per centum and were duly registered against said fund in the year- 1905, 1906 and 1907, ahead of and prior to all other county claims; which fact made said warrants payable out of said fund in the order of their registration and maturity against said fund and made them a prior claim on said fund and the moneys therein.

f. That the ordinance or resolution issuing said warrants
172 provided that said county debt, interest and principal, as evidenced by said county warrants should have priority of payment over any other debts subsequently contracted by said county.

g. That said warrants and court house debt were and should be a prior claim and prior lien upon the county revenues created and collected or to be created and collected by the levy of said special tax or any part thereof which tax is authorized by Section 215, Article XI of the Alabama Constitution and that said debt was and should be a lien upon said tax and all proceeds derived therefrom.

h. That it was especially agreed that said county would not appropriate or levy any portion of said special tax and tax money for any purpose until a sufficient amount of said special tax had been first levied and collected each year to pay the instalments of county warrants falling due in that year.

i. That it was expressly agreed that said resolution and order of the county was a binding, continuing contract between the county and the contractor and the holders for value of any of the interest-bearing warrants issued pursuant thereto and that said warrants should never be cancelled, reduced, impaired or unpaid and that said resolution should never be broken nor hereafter impaired, modified or repealed by said County so long as any of said county court house warrants and the interest thereon should remain outstanding and unpaid.

j. That said special tax should be levied and collected per Code 1907, Sections 138 and 134 by the Court of County Commissioners or Board of Revenue and used exclusively for the payment of said Court House warrants as they matured and for no other purpose,—except that any surplus of said tax might be used for any other lawful purpose.

k. That all of the instalments of principal and interest of said Court House debt and county warrants and sums of money sufficient to represent the same were then duly voted, appropriated and set aside out of said special county tax which had been, which were to be hereafter collected in each of the years during the life of said debt and that said money when collected should be set apart by the county treasurer and exclusiveiy used by him for the sole purpose of paying off the principal and interest of said warrants.

4th. That all of said warrants were paid promptly for ten
173 years until the Alabama Legislature abolished the elective Court of County Commissioners and created the Board of

Revenue with members appointed by the Governor by the special act of 1911.

5th. That the assessed valuation of the county is over $8,600,000,00 and that in 1911 this new Board of Revenue created a large road debt of possibly $70,000,00 in excess of the Constitutional limit of indebtedness; that the county had power under the constitution to levy a general county tax of (5) five mills on the dollar for general governmental purposes; that there was no money in the general fund and that for certain special county purposes a tax of one-fourth of one per centum might be levied as above stated, under Section 215 of the Constitution. That in this special county tax fund there was now the sum of $12,000,00 in the County Treasury of Shelby County.

6th. That in the year 1915 said Board of Revenue refused to levy and collect said special county tax of one-fourth of one per centum for the purpose of paying off said court house warrants, but levied all of said special tax to pay for the repair and construction of county roads and bridges generally throughout the county and to provide money to pay for future bridge debts not contracted previously or presently, but merely contemplated at the time this levy was made and the levy itself is set out at length as Exhibit "D," attached to the petition; no money therefore was levied or collected for said petitioner's warrants in 1915, but for county Bridges only, and said money was all used by said Treasurer to pay for debts registered subsequently to plaintiff's warrants against the same special fund, except the sum of $12,000,00 which the County Treasurer held and had in his hands and actually in the county treasury in said special tax court house fund and at the time demand for payment was made and when this suit was brought, but refused plaintiff's demand to pay any of said warrants on the sole ground that the tax levy authorizing the collection of the money was made by said Board of Revenue in 1915, and prevented him from using said money to pay plaintiff's Court House warrants and from paying it out for any other purpose except to pay county warrants drawn to pay for county roads and bridges.

7th. That said petition alleged that the resolution and ordinance of said Board of Revenue levying said tax in the year 1915
174 was null and void and ineffective in so far as it effects the rights of the warrant holders and petitioners' rights and that said resolution and 1915 tax levy was an attempt to divert the said special county tax from the purposes for which it was pledged and previously levied for the Court House debt in the years 1905, 1906, and 1907 by the contract ordinances passed by said county in those years; that the effect of said tax levy in 1915 was to repudiate the contracts made in 1905, 1906 and 1907 and to divert the special tax fund and proceeds previously pledged to a different purpose; that the effect of said tax levy and order levying said tax made in 1915 placing or attempting to place the proceeds and money of said county derived from the levy and collection of said special tax of one-fourth of one per centum beyond the reach of the bona fide holders of said warrants was a repeal or an attempted repeal of the contract ordi-

nance of 1905, 1906 and 1907 was an impairment of the obligation of said contracts, was a destruction or attempted destruction of the only remedy for the enforcement of the payment of said warrants existing at the time the same were issued and said contract ordinances were made and entered into; contrary to Section- 22 and 95 of the Alabama Constitution of 1901 and Section 10 of Article 1 of the Constitution of the United States; that said tax levy of the year 1915, in so far as it put the county machinery in operation to raise the money and place it in the special fund in the County Treasury was valid and binding upon the county, its people and tax payers of the county, but the levy or attempt to levy the tax for County Bridges or other purposes and divert it from the Court House debt was ineffective and void; was void as against the rights and objections of petitioners and the money collected from said tax was the money and property of petitioners and subject to be used by the County Treasurer solely for the payment of petitioner's said Court House warrants, petitioners having a prior valid lien upon said money.

8th. The county treasurer demurred to this petition (Admitting all the facts alleged) on numerous grounds,—principally that the Board of Revenue had a discretion in the matter of taxation and could levy this tax for any other lawful purpose; that the said tax levy in 1915 showed on its face that it was valid and lawful, and controlled the treasurer, and prohibited him from paying
175 petitioners' warrants, notwithstanding the Court House contracts and ordinances and tax levies pledging this special tax, previously made in 1905, 1906 and 1907, and pledged therein; that said contract ordinances levying said tax and giving a lien upon the proceeds thereof in the contracts of 1905, 1906 and 1907 was ultra vires; that the Treasurer was prevented from paying out this money under subsequent acts of the Legislature, approved April 22, 1911 and September 4, 1915. That the warrants were not valid, but were bonds of the county unlawfully issued; that the petitioners had no legal remedy to reach the funds in the hands of the treasurer, etc. The case came on for trial in the County court on these pleadings and the lower court sustained these demurrers to said petition as amended; the petitioners declined to plead further, thereupon the Court rendered judgment on April 29, 1916 dismissing the plaintiffs' petition out of Court and giving judgment for costs against petitioner.

9th. Thereupon petitioner appealed its case to the Supreme Court of Alabama and said Supreme Court on July 6, 1916, filed its final judgment affirming the judgment rendered by the County Court of Shelby County dismissing said petition.

Assignment of Errors.

Farson, Son & Company, appellant, plaintiff in error, therefore respectfully hereby assigns as errors in the record and proceedings of this cause in the Supreme Court of Alabama the following:—The Supreme Court of Alabama erred as follows:—

I.

By rendering a judgment against your petitioner and affirming the judgment rendered in said cause in the County Court of Shelby County dismissing appellant's petition for writ of mandamus.

II.

By refusing to render a judgment reversing the judgment of the lower court and directing the county court of Shelby County to issue the writ of mandamus as prayed for to compel said county treasurer, Bird, to pay over to your petitioners a sufficient amount of said special tax money out of the $12,000.00 in the county treasury in the county court house fund to satisfy petitioners' warrants registered against said fund.

III.

1st. By rendering a judgment dismissing the plaintiff's
176 petition thereby deciding in legal effect,—that said Board of Revenue of Shelby County by the levy of said special tax in the year 1915, enacted a valid tax levy ordinance binding on the plaintiffs; that said levy did not impair the contracts and the obligations of said contracts made by the county for plaintiff's benefit in the years 1905, 1906 and 1907; did not destroy the remedy to enforce the payment of said warrants which existed at the time said warrants were issued; and that said Board by said tax levy passed no act of legislation impairing said previous contracts in contravention of and as is forbidden by Section 10, Article 1 of the Constitution of the United States, and sections 22 and 95 of the Alabama Constitution.

2nd. By,—deciding against the contention of petitioners,—"that said tax levy ordinance of 1915 levying said special county tax for county roads and bridges was null and void as to plaintiff's rights—and that said ordinance in so far as the rights of your petitioners are concerned was null, void and ineffective."—but holding and deciding that said ordinance was a valid tax levy and was not void, sufficient to overcome the rights of your petitioner to said tax and sufficient to place the proceeds of said tax beyond the reach of petitioner and the creditors of said county and your petitioners' said warrants to whom said tax money rightfully belonged; and that said levy was sufficient in power to characterize and stamp upon said money a quality such as to rob it of the prior valid lien given to it and previously fixed and granted to your petitioners in said previous contracts in favor of the holders of said warrants; to deprive the holders of said warrants of the priority of payment out of said $12,000.00 special tax money in the special tax court house fund previously granted,—and thereby injected into and gave to said tax money, such a new title, right and interest therein to others and so as to enable the County to apply it to new debts not previously or presently contracted but merely contemplated to be contracted in

the future,—and so as to prevent the County treasurer from controlling it according to said contract previously made; so as to confer a new and different duty on the Treasurer as to the payment of said tax money; so as to make an obligation different to preceding obligations binding on both the tax collector and the county treas-
177 urer and place said money in the category of a newly "protected fund" under Section 215 of the Constitution of Alabama; so that it might be said of said money when collected,—"that it was levied and collected for the special county road and bridge purposes and therefore could not be used for any other purpose, the same being forbidden by said Section of the Constitution."

3rd. By,—rendering such judgment which, unless corrected gives power and vitality to said tax levy ordinance of 1915, contrary to rights of plaintiffs, and thereby destroying plaintiff's lien on said $12,000.00, and preventing plaintiffs' warrants from being paid out of the same and gives said county power to repeal all of the provisions and security set out in the previous ordinances, contracts and tax levies of said county made in 1905, 1906 and 1907 which were given petitioners to secure the payment of said warrants.

4th. By deciding in said judgment in legal effect; that the valid contract and ordinances of 1905, 1906 and 1907 authorizing the issuance of said warrants had not been impaired by the tax levy ordinances of 1915; and that no remedy for the enforcement of the payment of said warrants granted or given at the time said warrants were issued,—had been destroyed.

5th. By rendering a judgment against your petitioners which decided in legal effect that your petitioners have no remedy to recover the money belonging to *it* in the special tax county court fund, being a part of the $12,000.00 in said fund; that said Supreme Court of Alabama has in fact in this case denied your petitioners the rights secured to them under Section 10, Article I of the Constitution of the United States in this case: That said Court declared as sole reason for rendering said judgment that said money,—in said fund collected pursuant to said 1915 tax levy and claimed by virtue of said lien and said priority of registration and right of prior payment by virtue of said contracts of 1905, 1906 and 1907,—is not applicable by said county treasurer to the payment of your petitioners' warrants on account of the fact that in 1915 said Board of Revenue in fact made an invalid order levying said tax, and diverting the proceeds thereof to County purposes other than the payment of said Court House County warrants.

Wherefore, For these and other manifest errors appearing in the record the said Farson, Son & Company, plaintiff in error,
178 prays that this said judgment of the Supreme Court of Alabama, filed July 6, 1916, be reversed, set aside and held for naught and that a judgment be rendered for this plaintiff in error, granting its rights under the constitution and statutes of the United States and declaring that said tax levy made in 1915 is null and void in so far as the rights of this plaintiff in error *is* concerned and that said County Treasurer be required and ordered to apply said money to the payment of said petitioners' county court house warrants; and

said plaintiff in error also prays for judgment for all costs in its favor.

Witness, this the 27th day of July, 1916.

FARSON, SON & COMPANY,
By G. W. L. SMITH,
Their Attorney, Brewton, Ala.

179 In the Supreme Court of the State of Alabama, Seventh Division.

Case No. 819.

FARSON, SON & COMPANY, Appellants,
v.
JOE S. BIRD, as County Treasurer, Appellee.

Appeal from Shelby County Court.

Appeal Bond.

Know all men by these presents, That we, Farson, Son & Company, a partnership, composed of John Farson and William Farson, whose place of business and banking house is No. 115 Broadway, New York City, New York, as principal and United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety, are held and firmly bound unto Joe S. Bird, as County Treasurer of Shelby County, Alabama, in the full and just sum of One Thousand Dollars for the payment of which sum well and truly to be made we hereby jointly and severally bind ourselves and each of our successors and assigns firmly by these presents. Sealed with our seals and dated this the 27th day of July, 1916.

Whereas, lately, at a hearing and before the Supreme Court of Alabama, in a suit pending in said Court between the said Farson, Son & Company as appellant and plaintiff and said Joe S. Bird as Treasurer of Shelby County, Alabama, as defendant,—appellee, a final judgment was rendered against said Farson, Son & Company and said Farson, Son & Company seeks to prosecute its writ of error to the Supreme Court of the United States to reverse said final judgment;

Now, therefore, the condition of this obligation is such that if the said Farson, Son & Company as plaintiff in error shall prosecute its said writ of error and answer all costs and damages that may be adjudged against it, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

FARSON, SON & COMPANY,
By G. W. L. SMITH, *Att'y in Fact.*
UNITED STATES FIDELITY & GUARANTY COMPANY, [SEAL.]
By SYLVAIN BAUM,
CHARLES B. TEASLEY,
Its Att'ys in Fact.

This bond approved and to act as supersedeas.
August 2nd, 1916.

JNO. C. ANDERSON, *C. J.*

180 Filed Supreme Court of Ala. Jul- 27, 1916. Robt. F. Ligon, Clerk.

Certificate of Lodgment.

I, the Clerk of the Supreme Court of the State of Alabama, do hereby certify that there was lodged with me as such clerk on the 27th day of July, 1916, in the matter of Farson, Son & Company vs. Joe S. Bird, County Treasurer of Shelby County, Case No. 819:

1. The original bond of which a copy is herein set forth.

2. Two copies of the writ of error herein set forth, one for the plaintiff and one to file in my office.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said Court at Montgomery on this the 27th day of July, 1916.

ROBERT F. LIGON,
Clerk of the Supreme Court of Alabama.

Praecipe.

To R. F. Ligon, Clerk of the Supreme Court of the State of Alabama.

SIR: The plaintiff in error, Farson, Son & Company in the above entitled cause requests you to send all of the foregoing record in case No. 819 to the Supreme Court of the United States; that you will duly certify to said Court a true transcript of the same; that you incorporate into said record in accordance with the directions contained in the writ of error in the above stated cause now on file in your office the following:

The entire record for appeal to this Court and record filed herein in said cause No. 819 beginning at page 1 and down to page —, also include all the record in reference to the writ of error herein and the granting of the same.

FARSON, SON & COMPANY,
By G. W. L. SMITH, *Their Attorney.*

I, Attorney of record, for Joe Bird, County Treasurer, defendant in error, hereby acknowledge service of the above and foregoing, praecipe.

——— ———,

——— ———,

Attorneys for Defendant in Error, Joe S. Bird.

181 In the Supreme Court of Alabama.

FARSON, SON & COMPANY

vs.

JOE S. BIRD, as Treasurer, etc.

I, Robert F. Ligon, Clerk of the Supreme Court of the State of Alabama, by virtue of the within writ of error, and in obedience thereto, do hereby certify that the foregoing pages numbered from 1

to 179, both inclusive, contain a true, full and complete transcript of the record and proceedings had in said Court, as required by writ of præcipe under Rule 8 Supreme Court of the United States, together with a true and correct copy of the opinion of said Court, in the case of Farson, Son & Company vs. Joe S. Bird, as Treasurer etc., (7 Div. 819), together with the original writ of error, the original citation, and copies of the assignments of error, the petition for the writ of error and writ of error bond, as the same appear upon the files and records of said Supreme Court.

In testimony whereof, I have hereunto affixed my official signature, as Clerk of the Supreme Court of Alabama, and have caused the seal of said Supreme Court to be hereunto affixed at the Capitol, in the City of Montgomery, Alabama, on the 9th day of August, 1916, A. D.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,
Clerk of the Supreme Court of Alabama.

Endorsed on cover: File No. 25,576. Alabama Supreme Court. Term No. 746. Farson, Son & Company, plaintiff in error, vs. Joe S. Bird, as County Treasurer of Shelby County, Alabama. Filed October 25th, 1916. File No. 25,576.

Office Supreme Court, U. S.
FILED
JAN 29 1918
JAMES D. MAHER,
CLERK.

- 5 -

No. [redacted] 54

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

FARSON, SON & COMPANY,
A BANKING HOUSE OF NEW YORK CITY,
Plaintiff in Error,

vs.

JOE S. BIRD, AS COUNTY TREASURER, OF SHELBY COUNTY, ALABAMA,
Defendant in Error.

MANDAMUS.

BRIEF FOR THE PLAINTIFF.

G. W. L. SMITH, OF BREWTON, ALABAMA,
Attorney for the Plaintiff.

HARBOR PRESS

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No. 746.

IN THE SUPREME COURT OF THE
UNITED STATES.
OCTOBER TERM, 1916.

FARSON, SON & COMPANY,
A BANKING HOUSE OF NEW YORK CITY,
Plaintiff in Error,

vs.

JOE S. BIRD, AS COUNTY TREASURER, OF
SHELBY COUNTY, ALABAMA,
Defendant in Error.

MANDAMUS.

PART I.

STATEMENT OF THE CASE.

FIRST. Shelby County, Alabama, repudiated its county court house debt in the year 1915, without just cause and thereafter refused to pay the annual installment of said debt due February 1, 1916, evidenced by interest-bearing county warrants.

This was a civil action by the plaintiff in error, Farson, Son & Company, a banking house of New York City, the owner of about forty thousand ($40,000.00) dollars of this debt, who began this mandamus suit against the county treasurer of Shelby County, Alabama, Hon. Joe S. Bird, to compel him to pay the plaintiff the sum of $1,565.00, due February 1, 1916, by said county on said court house warrants owned by plaintiff and issued by said county in the years 1905, 1906 and 1907, pursuant to certain *valid contracts and*

orders made by the court of county commissioners of said county: said warrants being delivered in part payment of the cost of construction of the county court house building located at Columbiana, the county seat.

Said warrants were drawn on, payable out of and duly registered against, (in the years 1905-6-7) the special county tax fund of one-fourth of one per centum, the only special fund of the county, said Bird having no said fund at the time the sum of $12,000.00 derived from the copy of said tax which tax and the proceeds arising therefrom were levied, pledged and *appropriated, at the outset* in said years to pay off the subsequent annual installments of the court house debt, principal and interest represented by the issuance of said warrants; all done by proper resolutions and legislative orders of the county governing body,—the court of county commissioners.

In the original petition for the writ of mandamus are set all the facts of the case and it was filed in the county court of Shelby County, March 3, 1916. It shows, among other things; that the special county tax of one-fourth of one per centum authorized to be levied under the Constitution and Statutes of Alabama was levied and pledged and its annual proceeds duly appropriated by said county at the time plaintiff's warrants were issued by proper *contract ordinances* to secure the prompt payment of said warrants; that an attempt to repeal this appropriation and pledge was made in the year 1915 by said county by passing an order levying all of said special county tax for county roads and bridges, to pay debts not then contracted.

The defendant, Bird, did not answer the petition; but after it was amended (record page 115 to 118; 123 to 125) he filed to said petition as amended twenty-four demurrers (record page 120-3) defending himself on the ground that the money in the fund was levied for county roads and bridges in 1915 and not for plaintiff's

warrants. The case was tried and went off on said demurrers.

SECOND. April 29, 1916, the County Court of Shelby County, the court of first instance, sustained all of said demurrers, and on defendant's motion dismissed plaintiff's petition for the writ of mandamus. (Record page 125.)

THIRD. The plaintiff appealed the case May 15, 1916, to the Supreme Court of Alabama, the highest court in the State in which a decision in the action herein referred to could be had; the Supreme Court heard the case on argument and printed brief, and on July 6, 1916, decided the case; declaring that there was no error in the record and affirmed the judgment of the lower court (Record page 129 to 133.) Thereupon the case was brought here into this court by writ of error, and docketed October Term 1916.

PART II.

THE QUESTIONS INVOLVED MAY BE REDUCED TO THREE PROPOSITIONS:

FIRST.

That the special tax levy made in the year 1915 levying all of said tax of one-fourth of one per centum for county roads and bridges (Record p. 141-7) was null and void and ineffective so far as this plaintiff's rights are concerned; said levy was a species of subsequent legislation impairing the obligation of plaintiff's warrants and plaintiff's contracts contrary to Section 10, Article 1 of the Constitution of the United States; said levy was a repudiation of the previous agreement of said county that the money and proceeds of said tax should be *exclusively devoted* to the payment of plaintiff's

warrants for which said tax was *previously pledged.* This TAX LEVY MADE IN 1915 could not control the treasurer; it was void.

That said tax levy was an attempt to misappropriate the money derived from said tax; an attempt to divert said tax and withdraw the proceeds arising therefrom from the purpose for which they were previously pledged; SAID TAX LEVY WAS NOT VALID IN FACT NOR VALID IN LAW.

That it was an attempt to destroy the *only* remedy plaintiff had for enforcing the payment of said warrants existing at the time said warrants were issued; it was an attempt to destroy *the fund* upon which the warrants were drawn; to destroy the *priority* of payment due the plaintiff out of this fund and to prevent the payment of plaintiff's warrants in the *order* of their registration; it was an attempt to *repeal* the previous contract resolutions and orders of said county appropriating, levying and pledging said tax and its proceeds to the payment of plaintiff's warrants which was passed and enacted in the year 1905-6-7; it was an attempt to *deprive* the plaintiff of their property without due process of law contrary to the 5th amendment of the Constitution of the United States.

SECOND.

That the tax levy being ineffective as to the plaintiff's rights the proceeds of the tax became solely applicable under the previous levies, appropriations and pledges to plaintiff's warrants and it was the *legal duty* of said treasurer to pay said warrants. That said County Treasurer Bird at the time he made *refusal* in writing (Record page 12 and 13), to pay plaintiff's warrants *actually* had *in his hands* and *in* the *county treasury in* the *said* special *fund* against which plaintiff's warrants were drawn (and registered prior to all other claims under the laws of Alabama)

the sum of $12,000.00 collected by the levy in 1915 of said special tax of one-fourth of one per centum which had been previously *pledged* to the plaintiff and said money was *subject only* to the payment of plaintiffs warrants in the order of their registration.

THIRD.

The *refusal* of said treasurer to pay plaintiff's warrants out of said money and fund was a violation of his *official duty* created both *by law* and *by contract* and the writ of mandamus is the proper and only *adequate* remedy under the facts in this case to compel the defendant to perform his legal duty, that of paying the plaintiff's warrants; *otherwise* said failure and refusal to pay must then be held to be a breach of the official bond of said treasurer for which he and his sureties thereon are liable in damages in a suit for summary judgment provided by Section 5938 of the Alabama Code of 1907,—said warrants having been *allowed* and *registered* claims against said county, *prior* to all other claims, against said fund.

PART III.

A SPECIFICATION OF THE ERRORS RELIED UPON IN THIS CASE ARE AS FOLLOWS: (See record page 141-2.)

THE SUPREME COURT OF ALABAMA ERRED:—

FIRST.

By rendering a judgment against this plaintiff; affirming the judgment rendered in this case in the County Court of Shelby County by which the plaintiff's *petition* for writ of mandamus was *dismissed.*

SECOND.

By refusing to reverse the judgment of the primary court; by refusing to render a judgment directing the County Court of Shelby County to issue the writ of mandamus to compel the country treasurer, Bird, to pay the plaintiff's warrants out of the $12,000.00 special tax fund money in his hands in the County Treasury, and in said special tax county court-house fund derived from the levy of the special tax of one-fourth of one per centum; to compel said treasurer to pay said warrants out of said fund in the *order of their registration.*

THIRD.

1st. By rendering a judgment deciding in *legal effect* that the levy of the special tax for roads and bridges in the year 1915 was valid; was binding on the treasurer; binding on the plaintiffs; that said levy did not impair the plaintiff's warrants and contracts made in the years 1905-6-7; that it did not destroy the remedy to enforce the payment of said warrants which existed at the time said warrants were issued; that the Board of Revenue of said county in levying said tax for roads and bridges passed no act of legislation impairing plaintiff's contracts and warrants in controvention of Section 10, Article 1 of the Constitution of the United States.

2nd. By deciding *against* all of the contentions of your petitioners, viz:

That said tax levy ordinance of 1915 levying said special county tax for county roads and bridges was null and void as to plaintiff's rights and that said ordinance in so far as the rights of your petitioners are concerned are null, void and ineffective, *but holding and deciding*—that said ordinance *was a valid tax levy*, suf-

ficient to overcome the rights of your petitioner to said tax and sufficient to place the proceeds of said tax *beyond the reach of petitioner and the creditors* of said county and your petitioners' said warrants to whom said tax money rightfully belonged; and that said levy was sufficient in power to characterize and stamp upon said money a quality such as to rob it of the *prior valid lien* given to it and previously fixed and granted to your petitioners in said previous contracts in favor of the holders of said warrants; to deprive the holders of said warrants of the *priority of payment* out of said $12,000.00 special tax money in the special tax court house fund,—and thereby injected into and gave to said tax money, such a *new title*, right and interest therein *to others* and so as to enable the county to apply it to new debts not previously or presently contracted but merely contemplated to be contracted in the future,—and so as to prevent the county treasurer from controlling it according to said plaintiff's *contract previously made;* so as to confer a new and *different duty* on the treasurer as to the payment of said tax money; so as to make an obligation different to preceding obligations binding on both the tax collector and the county treasurer and place said money in the category of a newly "protected fund" under Section 215 of the Constitution of Alabama; so that it might be said of this money when collected,—"that it was levied and collected for special county road and bridge purposes and therefore could not be used for any other purpose."

3rd. By rendering such judgment which, unless corrected, gives power and vitality to said tax levy ordinance of 1915, contrary to rights of plaintiff, and thereby destroying plaintiff's *lien* on said $12,000.00, and preventing plaintiff's warrants from being paid out of the same and granting to said county's *power to repeal* all of the provisions and security set out in the previous ordinances, contracts and tax levies of said county

made in the years 1905, 1906 and 1907 which were given petitioners to *secure the payment* of said warants.

4th. By deciding *in legal effect* that the valid contract and ordinances of 1905, 1906 and 1907 authorizing the issuance of said warrants *had not been impaired by the tax levy ordinances of* 1915; and that no remedy for enforcing the payment of said warrants granted at the time said warrants were issued had been destroyed.

5th. By rendering a judgment against your petitioners which *decided in legal effect* that your petitioners *have no remedy* to recover the money *belonging to them* in the special tax county court-house fund, being a part of the $12,000.00 in said fund; that said Supreme Court of Alabama has *in fact in this case denied your petitioners the rights* secured to them under Section 10, Article 1 of the Constitution of the United States in this case; that said Court declared as the sole reason for rendering said judgment that said money,—(in said fund collected pursuant to said 1915 tax levy and claimed by virtue of said lien and said priority of registration and right of prior payment by virtue of said contracts of 1905, 1906, 1907)—is not applicable by said county treasurer to the payment of your petitioners' warrants on account of *the fact* that in 1915 said Board of Revenue *in fact made an invalid order levying said tax*, and diverting the proceeds thereof to county purposes other than the payment of said court-house county warrants, which is erroneous and untenable.

PART IV.

BRIEF OF THE ARGUMENT.

THE PLAINTIFF MAINTAINS THAT: THIS COURT HAS JURISDICTION OF THIS CASE:—

We declare in this case, as was stated to this court in a similar case heretofore by Mr. Elihu Root:

> "This is a typical case for the exercise of the "jurisdiction of this court under a long series of "decisions, and argument about it would be an "unjustifiable waste of the court's time."

We also declare that in our opinion that the Legal Profession throughout the country has received as true, clear and final, the apt statement of the law by this court in the 2nd head note of that case as follows:

> "2.—When the Federal Supreme Court is "called upon, in the exercise of its appellate jur-"isdiction over the State courts, to decide "whether state legislation impairs the obligation "of a contract, it is required to determine upon "its independant judgment:—(1) Was there a "contract? (2) If so, what obligation arose from "it? (3) Has that obligation been impaired by subsequent legislation?"
>
> Detroit United Railway v. Michigan, 242 U. S., 238;
>
> 61 Law Ed. 268.

Therefore we are here as plaintiffs asking this court to determine whether plaintiff's contract was *valid* or not.

Whether it was *impaired* by subsequent legislation or not.

Also to determine the main question which is: Were not the obligations arising from this contract those obligations which the plaintiff herein insist upon exist, and arose from it. If so, are we not entitled to the *benefits* of these obligations by having them *enforced*.

If the tax levy of 1915 was void and did not and

could not affect the Plaintiff's rights given by contract:—to have the proceeds of this tax applied *exclusively* to the payment of Plaintiff's warrants by said county and its County Treasurer, but the County Treasurer refused payment on the ground that the 1915 tax levy was *valid* and *not* in conflict with the Constitution of the United States:—Could he not be compelled by Mandamus to pay over the proceeds of the tax to Plaintiff especially when the Plaintiff had a first lien and first property right in and to the proceeds of the tax levy by the contract, Mandamus against the Treasurer being one of Plaintiff's remedies?

For the convenience of the court the following additional cases are cited which sustain the jurisdiction of this court, to-wit:

1st.—1140—The judgment of a State Court in mandamus proceedings is subject to review by the Supreme Court of the United States if a Federal Question is involved.

McPherson vs. Blacker, 146 U. S., page 1.

117 U. S., 404.

2nd.—1236—A Federal Question may be decided in passing on a demurrer.

Meyer vs. Richmond, 172 U. S., 82.

3rd.—1675—A Federal Question is raised by an unsuccessful contention in a State Court that the obligations of a contract have been impaired by State Statute and *ordinances.*

Chicago B. & Q. R. R. Co. vs. Nebraska, ex rel. Omaha, 170 U. S., 57.

Green vs. Nichol, 8 Wallace, 44.

4th.—1682—It should appear that the plaintiff had a legal contract which was subject to impairment.

New Orleans vs. New Orleans Water Works Co., 142 U. S., 79.

5th.—1673—The claim in a State Court that a State Statute (or ordinance of a county) is invalid because it impairs the obligation of a contract presents a Federal question.

Proprietors of Bridges vs. Hoboken Land Company, 1st Wall. 16.

6th.—1679—The State Court judgment by its necessary operation gave effect to the provisions of the legislative enactment of said county which is claimed by us to impair the particular contract in question.

LeHigh Water Company vs. Easton, 121 U. S., 388.

7th.—1345—A decision of the Federal question in terms by the State Court is not essential. If a decision of such question necessarily involved in the judgment rendered IT IS NOT A MATTER OF IMPORTANCE THAT THE STATE COURT AVOID-

ED ALL REFERENCE TO THE QUESTION.

Chapman vs. Crane, 123 U. S., 540.

Sayward vs. Denny, 158 U. S., 180.

8th.—1180—A *refusal* to consider a Federal question which is controlling in a case is equivalent to a decision against the Federal right involved therein.

Des Moines Navigation & R. R. Co. vs. the Iowa Homestead Company, 123 U. S., 502.

9th.—1348—Where the State Court did not in terms pass upon the claim distinctly made there: that the statutes of the State under which the proceedings were had were in derogation of rights secured to appellant by Constitution of United States, but the final judgment of that court necessarily involved an adjudication of that claim, this court has jurisdiction to review the case.

Chicago L. Ins. vs. Needles, 113 U. S., 574.

10th.—1350—The decision of a State Court denying the validity of a statute, the founding of a contract and in reality giving effect to subsequent statutes which impair the contract presents a Federal question for the purposes of a writ of error, although the State Court considers only the act it holds void and does not discuss the later acts.

McCullough vs. Virginia, 172 U. S., 102.

11th.—1351—A judgment avoiding all reference to a Federal question; a decision as to which is actually necessary to determine the case is as much against the right or claim as though it had been directly refused.

Chapman vs. Crane, 123 U. S., 540.

12th.—1187—A Federal question sufficiently appears, although the complaint does not mention the Constitution of the United States where the WHOLE THEORY OF THE CASE is the impairment by statute of a contract created by a prior statute and the presentation and decision of this question appear from the record and *opinion* of the State Court.

Columbia Water Power Company vs. Columbia

Electric Power Company, 172 U. S., 475.

13th.—1319—The *title* of the successful party must have been dependent upon the statute claimed to be contrary to the Constitution by the unsuccessful party.

Williams vs. Norris, 12 Wheat, 117.

14th.—1173—Though the formal raising of a Federal question is not essential, it must necessarily have been involved in the cause.

Yazoo & M. Valley R. R. Co. vs. Adams, 180 U. S., 41.

Murray v. Charleston, 96 U. S., 432.

15th—"No ...rit of evasion for defeating the claim of Federal rig... must be shown," by the State Court.

Atlantic Coast Line R. R. Co. vs. Mims, (242 U. S., —)

(67 Law Ed. p. 189.)

PART V.

THE PETITION IN THIS CASE IS NOT CONTROVERTED, PROVES THE PLAINTIFF'S CASE, AND SHOWS THAT:—

1. The plaintiff's warrants, $870.00 of them, were issued under the contract ordinances of February 21, 1907, which is a part of the contract of July 25, 1905, (Exhibits "E" "F," and "G," Rec. p. 17 to 33ffi 33 to 44; 44 to 82; 82 to 97) the *remainder* of the warrants were issued under the contract ordinances of September 3, 1907, (Rec. 97 to 113.)

2. The form of the warrants were substantially as set out (Rec. p. 7 to 12.)

3. Said warrants were duly assigned in writing to the plaintiff per form of assignment (in the Record page 43, page 92 and page 10.)

4. All of said warrants were duly allowed by the court of county commissioners of said county, as shown

in said contracts and orders of the court issuing said warrants.

5. The plaintiff was therefore subrogated to all the rights of the original contractor and was the assignee of all benefits conferred in said contracts and in said warrants and had the right to enforce the same.

6. There were numerous provisions in said contract ordinances made for the specific purpose of securing the prompt and full payment of the annual installments of said warrants as they fell due.

The installments of said warrants are shown in the Record at page 89, 94 and 105, 109 and 110.

7. The provisions made to secure said warrants among others are as follows:—

1. All of said resolutions and contracts *are parts of one another*, made to better secure the payment of the whole court house debt as it fell due annually. (Rec. p. 88, 83, 26; 90; 19, 98, 99.)

2. All of said contracts are *continuing* contracts; wherein it is expressly agreed that none of them or any of their provisions should ever hereafter be broken, *impaired or repealed.* (Rec. p. 19, 88; 103.)

3. *A tax levy was made at the outset* in the year 1905 of the special county tax of one-fourth of one per centum, provided for by Section 215 of the Constitution of Alabama and Code 1907, Section 134 and 138 which were laws at the time the contracts were made; this tax was dedicated, devoted and pledged for the payment of this debt, *exclusively* and for no other purpose. (Rec. p. 43, 46; 95, 110; 28, 19.)

4. The proceeds of this special tax *was in the outset voted, appropriated and set aside by the* commissioners court to pay these warrants as they fall due; the tax was levied for each of the years 1907 to 1930; and the proceeds were *appropriated* for each of the years 1907 to 1930. (Rec. p. 28 32; 35, 43; 94, 110.)

5. That the proceeds of said tax when *collected*

should be used *exclusively* for the payment of plaintiff's warrants, except that the *surplus,* if any, might be used for any lawful purpose. (Rec. p. 28, 94; 95, 110; 41.)

6. Said county granted the plaintiffs a *prior lien* and a pledge on said tax and *all of the proceeds thereof* during the life of said debt to secure the payment of said warrants. (Rec. p. 41, 29; 95, 111.)

7. Said court house warrants on account of the fact of their *prior registration,* have priority of payment over all other county debts, *chargeable* against said special tax fund; also, in addition thereto, said warrants were given *priority* of payment over all other debts of the county *subsequently* contracted. (Rec. p. 95, 111; 72 So. Rep. 615.)

8. Said warrants were assigned per *written form of assignment* on back made by the contractor to the *plaintiffs,* said plaintiffs thereby became *subrogated* to all rights, liens and privileges belonging to the contractor under the contracts. (Rec. p. 29, 43; 92, 108; 27.)

9. Said warrants, by their terms, are made payable,—*First* out of said special tax fund, but *Second* if, for any reason there should be no money in said special tax fund, then in that event said warrants are made payable out of the general funds of the county. (Rec. p. 32, 40; 95, 103.)

10. Said county, its officers and tax payers agreed that *after delivery* of said warrants to the contractor, then in that event, that as to the warrants delivered, thereby said county, its county officials and tax payers *waived all defenses* of whatsoever nature to the payment of said warrants. (Rec. p. 19, 88; 103.)

11. Said county agreed to pay all *costs and attorneys' fees* incurred by plaintiff in the collection of said warrants. (This expense, being a part of and an incident to said warrants, should be ordered paid out of said special tax fund.) (Rec. p. 19, 24.)

NOTE: The Supreme Court of Alabama has

vouched for the validity and correctness of all the foregoing. (See Board of Revenue of Shelby County vs. Farson, Son & Company, 72 So. page 614. This brief, page 51.) (Appendix.)

8. That said Shelby County was virtually *insolvent,* having an outstanding interest-bearing debt of $294,000.00 or about $70,000.00 in excess of the constitutional limit of indebtedness. (Exhibit "C," Rec. page 13 and 14.)

9. That the County Treasurer, Bird, was using the special tax money of one-fourth of one per centum levied in 1915 to pay off the county road warrants registered at a later date against said fund in the year 1911, being inferior claims to plaintiff's warrants and not entitled to payment prior to the payment of plaintiff's warrants. (Rec. p. 5.)

That the *gist of the whole case* is well set forth in the petition as amended (in Rec. p. 115, 116 and 117), to-wit:

> "That all of said warrants were *duly registered* in the year 1907 *against the special tax fund of one-fourth of one per centum* of said county authorized by Section 215 of the Constitution and Code Sections 134, 138 and 139 and the orders of said court; and the *books* of the county treasurer *show,* that *all* of said court house warrants are duly registered against said special tax fund; and all of said warrants are registered and numbered in the order in which they were *presented* and *registered* in such a manner as to make the *order of their registration the order of their maturity* and payment, both principal and interest, along with the other entire Court House debt and warrants evidencing the same; and said $12,000.00 *now in the hands* of said County Treasurer levied and

collected by said county by the special tax of one-fourth- of one per centum in the year 1915 *is in said special tax fund, now in the hands of the County Treasurer and is subject to and available for the payment of said petitioner's warrants, due February* 1, 1916. That said tax levy, made or pretended to be made by the Board of Revenue in the year 1915 is *null and void so far as the plaintiff's rights and warrants are concerned and in so far as said levy is an attempt to divert* the county revenues from the court house debt, and the payment of your petitioners' warrants; and said County Treasurer should use said $12,000.00 derived from said tax levy for the purpose of paying off your petitioners' warrants and all other court-house warrants falling due February 1, 1916, *and the remainder of said money to any other lawful purpose;* that said petitioners' warrants *are registered* against said special fund and the proceeds derived therefrom, to-wit: said $12,000.00 and said county treasurer has failed and *refused to pay* off your petitioners' *warrants* and said court-house warrants in the *order* of their *registration.*"

(Record page 117.)

"*That all of the acts and doings* of said *County* and said Board of Revenue and said County Treasurer, Bird, have been done *contrary to the rights of your petitioner* and said acts and doings have *greatly impaired and lessened* the value of complainants' warrants and the obligations made by said County pursuant to which said warrants were issued contrary to Article One, Section Ten of the *Constitu-*

tion of the United States and Sections 22 and 95 of the *Constitution of the State of Alabama.*"

PART VI.

THE FOLLOWING LAWS OF ALABAMA WERE IN EXISTENCE AT THE TIME THE CONTRACT ORDINANCES OF SHELBY COUNTY WERE MADE WHICH AUTHORIZED THE ISSUANCE OF PLAINTIFF'S WARRANTS, TO-WIT:—

1. Constitution 1901, Section 215 (Vol. 3) page 160 of Code of 1907, provides:

1. "That no county in this state shall be authorized to levy a greater rate of taxation in *any one year* on the value of the taxable property therein than one-half of one per centum; provided that to pay debts existing on 6th of December, 1875, an additional rate of one-fourth of one per centum may be levied, etc.; provided further that to pay any debt, etc., that may hereafter be created for the erection of the necessary public buildings, bridges, or roads (a) any county may levy and collect such special taxes not to exceed one-fourth of one per centum which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected."

2. Constitution 1901, Section 224 (Vol 3, page 170, Code of 1907). This section places a *debt limit* upon the county of three and one-half per centum of the assessed value of the property therein.

3. Constitution of 1901, Section 95, (Vol. 3, page 79, Code of 1907). "There can be no law of this state impairing the obligation of contracts by destroying or impairing the remedy for their enforcement; etc.

4. Same Constitution, Section 22, (Vol. 3, page 23

and 24 Code of 1907.) "That no ex post facto law, nor any law, impairing the obligation of contracts, etc., shall be passed by the Legislature.

5. Constitution of the United States, Article One, SECTION 10. "No State shall, etc., make, etc., pass any bill of attainder, ex post facto law, or law impairing the obligation of contract, etc.

PART VII.

ALABAMA STATUTORY PROVISIONS WERE:—(In the Code of 1907.)

1.

Code 131 (1403) County Buildings Erected and Repaired by County. The county buildings are to be erected and kept in order and repair at the *expense of the county,* under the direction of the Court of County Commissioners. WHICH COURT IS AUTHORIZED TO MAKE ALL *NECESSARY CONTRACTS* FOR THAT PURPOSE.

2.

Section 1405. Erection of County Buildings. It is the *duty* of the court of county commissioners of each county to erect a courthouse, jail, and other necessary county buildings; and such court has authority to levy a *special tax* for that purpose. (Code of 1896.)

3.

Code 133 (1045) Erection of County Buildings. The Court of County Commissioners of each county *shall erect courthouses,* jails, and hospitals and other necessary county buildings; and such court has authority to levy a special tax for that purpose; provided that

in counties in which a circuit court or court of like jurisdiction has been authorized before the adoption of this Code to be held in more than one place, the Court of County Commissioners or Board of Revenue may build courthouses in each place of holding court, but this section shall not affect in any wise any local law heretofore enacted.

4.

Section 1409. Special Tax for Courthouse or Jail: Disposition of Surplus. Whenever it shall be deemed necessary by the Court of County Commissioners of any county in this state to build a new courthouse or jail for such county, or to repair those already built, such court shall have the power and authority *to levy* and collect a *special tax* upon the taxable property of such county, not to exceed in *any one year one-half* of one per centum, for such purposes; and such tax, *when collected*, shall be *used exclusively* for the purposes herein indicated; but should any greater fund be raised by such tax than is needed for the purpose for which it was levied, such balance, after the building and repairs hereinbefore set forth shall have been paid for, shall go into the fund for compromising the debt of such county, or in case it be not needed for such purpose, shall be turned over to the treasury, and become a part of the common fund of the county. (Code of 1896.)

5.

Code 138 (1409) Special Tax for Courthouse or Jail, Disposition of Surplus. Whenever it shall be deemed necessary by the Court of County Commissioners of any county in this state to pay any debt or liability now existing against any county incurred for the erection, construction or maintenance of the necessary public build-

Code of 1907—Sec:

"123.—(1397) (886) (815) (897) (763). "COUNTY A BODY CORPORATE. Every "county is a body corporate, with power to sue or "be sued in any court of record."

Code of 1907—Sec:

"208.—(1426) (910) (841) (922) (787) "ELECTION AND TERM OF OFFICE. "A County Treasurer for each county is elected by "the qualified voters thereof, who holds office for "four years from the first Monday after the sec- "ond Tuesday in January next after his election, "and until his successor is elected and qualified."

Code of 1907—Sec:

"209.—(1427) (913) VACANCY, HOW "FILLED. Vacancies in the *office of county "treasurer* are filled by appointment of the court "of county commissioners, and the person appoint- "ed holds office for the unexpired term and until "his successor is elected and qualified."

No. 390) AN ACT. (H. 668

To authorize the County Court of Commissioners, or other governing body of like jurisdiction in any county in this State, to levy and collect such special taxes, not to exceed one-fourth of one per centum per annum, to pay any debt or liability now existing against the County, incurred for the erection, construction or maintenance of the necessary public buildings, bridges or roads, etc.

SPECIAL TAX LEVY FOR COUNTY IMPROVEMENTS.

Section 1.—BE IT ENACTED BY THE LEGISLATURE OF ALABAMA, That the Court of County Commissioners, or other governing body of like jurisdiction, in any county in this State, is hereby authorized to *levy and collect such special taxes* as it may deem necessary, not to exceed one-fourth of one per centum, for the purpose of paying any debt or liability now existing against any county, incurred for the erection, construction or maintenance of the necessary public buildings or bridges, or that may hereafter be created for the erection of public buildings, bridges or roads, which taxes, so *levied and collected*, shall be *applied exclusively* to the purposes for which the same are so levied and collected.

Approved September 30, 1903.

Subsequently the foregoing statute was codified as Section 134 of the Code of Alabama, 1907, as follows:

"134.—SPECIAL TAX FOR COUNTY "BUILDINGS.—The Court of County Com- "missioners, or other governing body of like jur- "isdiction in any county in this State, shall *levy "and collect* such special taxes as it may deem "necessary, not to exceed one-fourth of one per "cent *per annum*, for the purpose of paying any "debt or liability now existing against any coun- "ty, incurred for the erection, construction or "maintenance of the necessary public buildings "or bridges, or that may hereafter be created "for the erection of public buildings, bridges or "roads, which taxes, so levied and collected, shall "be applied exclusively to the purposes for which "the same are so levied and collected."

ings or bridges or that may hereafter be created for the erection of necessary public buildings, bridges or roads, such court shall have the power and authority to levy and collect a *special tax* upon the taxable property of such county not to exceed in *any one year* one-fourth of one per cent for such purposes; and such tax when collected shall be applied exclusively for the purposes for which the same was so levied and collected.

6.

Code 139 (1410) Special Tax: How Levied. In all cases in which the Commissioners Court of any county *is directed,* or empowered to levy a special tax for county purposes such levy shall be made by the court itself upon the *assessment last made for state taxes.*

7.

Code 2135: "It shall be the duty of the County Commissioners at the term commencing not later than the *first Monday in June* to levy the amount of taxes required for the *expenses of the county for the current year;* not to exceed *one-half of one per centum* on the value of the taxable property, and the amount of other subjects of taxation in the county as assessed for revenue to the state as shown by the book of assessments *after it has been corrected.*"

8.

Code 211. Duties. It is the duty of the county treasurer: 1. To receive and keep the money of the county and *disburse the same according to law.*

2. To keep in well-bound books separate registers of claims presented against the general fund, *the special fund, if any,* and the fine and forfeiture fund.

4. To number and register in the order in which they are presented all claims against the *general fund* which have been audited and allowed by the Court of County Commissioners as claims against such fund, such register showing the number of the claim, the *date presented for registration*, to whom allowed, when allowed, the character of the claim and the amount thereof: AND EXCEPT AS OTHERWISE PROVIDED BY LAW, *TO PAY THE SAME IN THE ORDER OF THEIR REGISTRATION*. He must in like manner number, register and pay all claims allowed against a fund raised for a special purpose.

9.

Code 2208. How Special Taxes Kept and Disbursed by the Treasurer. The county treasurer receiving such special taxes shall keep the same separate and distinct from all the public funds and shall keep a separate account thereof and shall promptly disburse the same upon orders drawn theron by the legally authorized authority.

10.

Code 212. The county treasurer must not refuse the payment of any lawful and valid claim for the reason that claims of prior registration have not been paid if there is money in the treasury belonging to the fund sufficient to pay such prior claims and the claims so presented.

11.

Code 5938. Against County Treasurer and Sureties for Failure to Pay Allowed Claims: Court and Notice. If any county treasurer fails on demand and without

good excuse to pay an allowed claim against the county when there are *funds in the treasury* to pay the same, judgment may be obtained against him and his sureties or either of them on five days' notice on motion in the Circuit Court of the county in the name of the party to whom the claim is payable, his legal representatives or *assigns*, for the amount of the claim, with the interest from the time of the demand and ten per centum damages and costs. (Like Code Section 1550-55 Ala. 497.)

12.

Code 5900. The motion may be made by the party aggrieved or his legal representative against the person in default and the sureties upon his official bond; and the judgment must be rendered against such of the parties whether principal or surety, as may have received notice of the intended motion.

13.

Code 146 (Code of 1907) requires the Probate Judge of the county to issue and deliver to the owner of an allowed claim against the county the proper county warrants.

14.

Code 5158. Provides that all contracts are assignable by endorsement.

15.

Code, Section 4864, 4866, provides a simple method for trying suits to obtain a writ of mandamus.

PART VIII.

THE PLAINTIFF HAS BEEN DEPRIVED OF THREE CONTRACT RIGHTS BY THE COUNTY TREASURER AND BY SHELBY COUNTY.

1st. The right to be paid out of the money in the hands of the treasurer and out of this special tax fund.

2nd. The right to have said warrants paid off out of said fund in the order of their registration.

3rd. The right to enforce the foregoing rights by the writ of mandamus or by motion for summary judgment.

Shelby County by an order of legislation made June 7, 1915, levied all of said county tax of one-fourth of one per centum (previously levied, pledged and appropriated to the payment of plaintiff's warrants) to pay off county road and bridge debts created by the order levying said tax (record page 14 to 17).

The effect of this order, if valid, repeals the previous orders made for plaintiff's benefit, to secure the payment of plaintiff's warrants, and destroys the vital parts of the previous contract and all remedy for enforcing plaintiff's contract and plaintiff's warrants.

The levy was void so far as the plaintff's rights are concerned; in Alabama all illegal tax levies must be collected. The tax-payer cannot resist the collection of the tax; he must pay the tax under protest and sue to recover afterwards.

Adams vs. So. Ry. Co., 176 Ala. page 320.

Defendant Bird interposed twenty-four demurrers to the plaintiff's petition as amended (record page 120-123).

The first two demurrers No. 1 and 2 really raise the only questions in the case; all other demurrers are repetitions or are without merit and they were so considered by the Supreme Court of Alabama; demurrers No. 1, 23 and 24 deny the plaintiff's right to secure the issuance of the writ of mandamus; deny plaintiff's right to a motion for summary judgment against the county treasury, but we show:—

That the county treasurer and the sureties upon his official bond are *all insolvent* (record page 117.) Therefore a motion for summary judgment to collect damages out of their private property would be abortive.

That the only *specific and adequate* remedy in this case for the plaintiff is his resort to this writ of mandamus to compel said treasurer to perform his official legal duty, that of paying plaintiff's warrants out of said special fund out of the money in his hands; out of the money in the county treasury in the order of their registration; said warrants being drawn on and registered against said fund, there being sufficient money in the fund.

That said county by statute Section 211 Code of 1917 contracted to pay plaintiff his warrants registered against said fund in the order of their registration and the treasurer must comply. His failure to do so is a failure to perform his legal duty; also the duty made by a contract between the county and its creditors.

Mr. Dillon in his great work on municipal corporations, Vol. 2, page 1302, Section 859, 5th Edition 1911, says as follows:

County warrants must be (1) paid off in the order of their registration and the Legislature has power to prescribe the order of payment of warrants. *Such a statute creates a contract for precedence with the warrant holders which cannot be impaired by subsequent legislation.* The municipality owes the holders of the warrant a duty to pay in that order and for a breach of their duty the warrant holders are entitled to redress by action, etc.

2.

Section 860, Vol 2, page 1306. But a city which *contracts* with reference to a special fund and issues a warrant payable therefrom is *under the duty of performing all the legal steps necessary* to the raising of the fund. (Warner v. New Orleans, 167 U. S. 467).

3.

Vol. 2, Last Edition, Section 851, page 1286: In this work of Judge Dillon's which has been so often cited by this Court, we find that counties may issue interest-bearing warrants, payable annually at stated times in the future and drawn on and made payable from the county special tax courthouse funds and the case of Tally v. Jackson County, Alabama (39 So. Rep. 167), 175 Ala. 644, is cited with approval. And at page 1292 the rule is stated that a transferee of the warrant may sue the municipality in his own name.

4.

The county has by this statute (Code Sec. 211) contracted to pay the creditor off in this particular order of the registration of his warrants and the treasurer must comply. His failure to do so is a failure to perform his legal duty and is a breach of his official bond, making him and his sureties thereon liable therefor.

Caldwell vs. Dunkin, 65 Ala. 465-463;
Vincent vs. Gilmer, 51 Ala. 389-90;
Commissioners Court vs. Moore, 53 Ala. 25;
Simpson vs. Lauderdale County, 56 Ala. 67;
Shinbone vs. Rather, 56 Ala. 183;
Barnes vs. Hudmon, 57 Ala. 504;
City of Eufaula vs. Hickman, 57 Ala. 340;

Jackson vs. Derick, 117 Ala. 357;
Jefferson Publishing Co. vs. Hilliard, 105 Ala. 581.

5.

"To entitle a creditor who has a warrant payable out of the particular fund for payment and for the remedy by action or mandamus it is necessary for the plaintiff to allege and prove affirmatively that there is money in the fund and this is also the rule when the warrants are only payable in the order of presentation and registration."

Dillon's Municipal Corporations, 5th Edition, Vol. 2, page 1292, Section 854.

6.

In the *first two* paragraphs of the opinion of the Supreme Court of Alabama *in this case* it is held that *mandamus will lie to compel the county treasurer* to pay a special claim, a warrant drawn on a special fund as follows:

"It is well settled law that mandamus will lie to compel a treasurer to pay a special claim out of a special fund; and in some cases it will lie though an action might be maintained against him for such failure."

Sessions vs. Boykin, 78 Ala. 328;
Wyker vs. Francis, 120 Ala. 520;
Farson, Son & Co. vs. Bird, 72 S. Rep., page 550.

7.

In *the second* paragraph of the opinion of the court in this case the court holds that a motion for summary judgment will lie against the county treasurer as follows:

"There is a class of claims however as to which it is held that mandamus will not lie against a county treasurer for failure to pay even though he have the funds in hand and ought to pay, because our statutes have provided a summary and adequate remedy against the county treasurer and his bondsmen."

Arrington vs. Van Houton, 44 Ala. 284;
Hines vs. Salter, 154 Ala. 284;
Norwood vs. Goldsmith, 162 Ala. 171;
Brown vs. Gay-Padgett Co., 186 Ala. 561.

Therefore, a county treasurer *can* be made by the writ of mandamus to pay the plaintiff's warrants in this case. This case falling directly under the authorities cited in No. 6 *supra.*
Mandamus is the proper writ to be issued to enforce contracts made by the state.

Comer vs. Bankhead, 70 Ala. 145.

A motion for summary judgment is not *exclusive,* but cumulative to the remedy of mandamus.

Thompson vs. Holt, 52 Ala. 497;
Ex parte Candee, 48 Ala. 386.

Mandamus is a writ of execution and is the only writ known to the law which can reach the specific county funds in the hands of the county treasurer and compel their application to petitioners warrants.

White vs. Mayor of Decatur, 119 Ala. 485;
Wyker Treasurer vs. Francis, 120 Ala. 509-523;
Mayor of Anniston vs. Hurt, 140 Ala. 401;
Farnham vs. Mims County Treasurer, 174 Ala. 234.

PART IX.

THE DECISIONS OF THE ALABAMA SUPREME COURT IN FORCE AT THE TIME THE PLAINTIFF'S WARRANTS WERE ISSUED SECURED TO HIM A REMEDY BY THE WRIT OF MANDAMUS TO COMPEL THE COUNTY TREASURER TO PAY OVER THE MONEY IN HIS HANDS.

Our complaint is that the Alabama Supreme Court denies to the plaintiff both the right to the writ of mandamus, and the right to a motion for summary judgment against the treasurer,—*both* remedies are denied.

The court holds that the special tax levy for roads and bridges made *in fact* in the year 1915 *was binding in law* on the county treasurer and that under the constitution the money raised from this levy cannot be *used for any other purpose* except for the road and bridge debts referred to in the 1915 levy, but in a later case takes the opposite view. (See page 58 of this brief.)

1.

The Supreme Court of the United States will adhere to those laws and Supreme Court decisions of a State that will sustain the validity of municipal bonds and enforce their payment.

See the excellent note to Snare & Triest vs. Friedman, L. R. A. Vol. 40, (N. S.) p. 408.

2.

"The decisions of the Supreme Court of Alabama which affect property rights in cases of this sort are *rules of property* and remedies given by the statutes and construed by the courts *at the time the contract was made* are a part of the contract."

72 S. Rep. 614. (See Appedix.)

3.

At the time these contracts were made Chapter 109 and Sections 4864 to 4872, inclusive, of the Code of 1907 were in full force; they provide: That the common law governing the writ of mandamus should be left in full force in the State of Alabama, except as modified by said Sections, it being expressly stated in Section 4872, —"That the true intent and meaning of this chapter being to provide a plain, more speedy and less expensive mode of procedure in all cases to which it applies."

4.

Also Section 4864 then in force provides: "That all applications for mandamus, etc. * * * shall be commenced by a petition verified by affidavit in which the facts shall be stated as briefly and succinctly as the case will admit of; any defendant may demur, plead or answer as to all such matters as may be necessary to his defense; and any of the pleadings in such proceedings may be amended as often as occasion may require to attain the ends of justice by striking out parties and adding new parties; and upon the issue thus presented the court shall award the relief, if any, to which the petitioner is entitled."

"Under this last named Section mandamus is declared to be " the proper remedy to compel the payment of a municipal warrant." (See authorities printed in the code under this section, citing the following case) :—

Wyker vs. Francis, 120 Ala. 509. (Decided by the Supreme Court of Alabama, November term, 1898.) Said Court in said case on page 520 said:

"The assignments of error are upon the rulings of the Court on the demurrers. The real and only question involved is whether a resort can be had to proceed-

ings by mandamus to compel the Treasurer of a municipal corporation to pay a warrant duly and legally drawn and issued against the municipality out of the general funds of the corporation.

It is thoroughly and well settled law that where payment is sought out of a *specific fund appropriated and set apart for that purpose* mandamus is the proper remedy to compel payment on refusal by the treasurer or other disbursing officer, upon demand made for payment. On this proposition the decisions are in harmony and accord.

But where payment of a warrant drawn on the treasurer and payable out of the *general fund* is sought the authorities are in conflict as to the right of resort to mandamus.

The general rule is that where a party has another specific and adequate legal remedy he is not entitled to a mandamus.

But this other specific and adequate legal remedy must be against the *party* to the mandamus proceedings.

That the petitioner has the right of action at law on his warrant against the city of Decatur is no sufficient answer for the non-performance of a purely ministerial act and duty by an officer.

The rule of practice is, however, different in the Federal Courts where the owner and holder of a warrant drawn on a municipality is required first to reduce his demand to a judgment as a foundation for a mandamus; 18 Fed. Rep. 873. 106 U. S., 663.

We can see no good reason in this rule. If the municipality admits its indebtedness which it does when through its proper officers the claim or demand is duly audited and allowed and a warrant therefor is ordered to be drawn and is properly drawn on its treasurer, the question might well be asked, why put the *owner* and holder of such warrant to the circuity of an action at

law on the warrant against the city or municipality before applying for a mandamus against the treasurer to compel him to discharge a simple ministerial act of payment which the proper municipal authority has already ordered him to perform. * * * * * * * *

"The act of paying a demand or claim against the municipal corporation after it has been duly audited and the amount fixed like the act of drawing a warrant upon the disbursing officer is regarded as a ministerial duty unattended with the exercise of any judgment or discretion and hence subject to control by mandamus; and no duty devolves upon him except the ministerial duty of making the payment."

In the case of Sessions and Leary vs. Boykin, 78 Ala. 328 (Decided December term, 1884)—Mandamus against the *county* treasurer of Bullock County.

Justice Clopton rendering the opinion uses the following language:

"It may be conceded that where a warrant, though drawn by the proper officer is payable out of the gener*al funds* of the county, a mandamus will not lie to compel its payment, but the party will be left to his remedy on the official bond of the officer or by action on the case."

Taking the whole context of that opinion we do not understand that the above excerpt from the opinion was intended as an assertion that such is the law. It was more in the nature of an answer to argument. Besides the question involved in that case was one of payment of a claim out of a *specific fund* set apart for the purpose by the statute and did not call for a determination of the legal proposition contained in the statement above quoted.

It is well, however, to note here that in the above case it was decided that,—"An action on the case against the (County) Treasurer or an action on his official bond affords pecuniary compensation, BUT DOES NOT

COMPEL PERFORMANCE OF THE SPECIFIC DUTY.

The contention by counsel for appellant that appellee has a remedy by action on the case against appellant, or an action of his official bond, if he is a bonded officer, is not good. Such other remedy MUST BE ADEQUATE. Such remedy IS ADEQUATE WHEN IT REACHES THE END INTENDED AND ACTUALLY COMPELS THE PERFORMANCE OF THE DUTY WHICH HAS BEEN NEGLECTED OR REFUSED. It must apply to the case and afford the particular right to which the party is entitled.

ANYTHING WHICH FALLS SHORT OF THAT IS NOT ADEQUATE OR COMPLETE.

We therefore hold that the owner of a warrant which has been duly and legally issued by a municipal corporation after demand and refusal of payment by the Treasurer, HE HAVING IN HIS HANDS AT THE TIME SUFFICIENT FUNDS NOT OTHERWISE APPROPRIATED, * * * * IS entitled to a writ of mandamus against the Treasurer to compel such payment.

Wyker vs. Francis, 120 Ala. 520, 521, 522, and 523.

6.

In the case of Sessions and Leary vs. Boykin, County Treasurer of Bullock County, Alabama, page 330 (Decided December term, 1884), the Supreme Court of Alabama said:

"Statute creates the conditions occuring, a specific right to repay out of a specific fund set apart for the purpose. An action on the case against the Treasurer, or an action on his official bond for neglect or breach of

duty, affords pecuniary compensation, but does not compel the performance of the specific duty. Another remedy to defeat mandamus must be adequate to enforce the right or the duty in question."

Kendall vs. United States, 12 Pet. 524;
Mobile County vs. Stone, 69 Ala. 406.

"In *this* particular *case* now before this Court the Supreme Court of Alabama has reaffirmed the foregoing well settled case by declaring:

"IT IS A WELL SETTLED LAW THAT MANDAMUS WILL LIE TO COMPEL A TREASURER TO PAY A SPECIAL CLAIM OUT OF A SPECIAL FUND AND IN SOME CASES IT WILL LIE THOUGH AN ACTION MIGHT BE MAINTAINED AGAINST HIM FOR SUCH FAILURE. Sessions vs. Boykin, 78 Ala. 328; Wyker vs. Francis, 120 Ala. 520."

Farson, Son & Company vs. Bird, County Treasurer, 72 So. Rep. 550. This case. (See Appendix p. 65.)

7.

We insist therefore that we have shown to the court that mandamus is the *only adequate remedy* in this case to compel the county treasurer, Bird, to pay the court-house warrants of the plaintiff which are a special claim drawn on and made payable out of the special tax county fund of one-fourth of one per centum, created for that purpose when the warrants were issued and in which fund there was plenty of money at the time in the county treasury in said special fund at the time demand for payment was made and refused by the treasurer against which fund plaintiff's warrants were registered and were prior claims thereon; the money and proceeds of the special tax created a fund

which could not be diverted to any other purpose except for the payment of plaintiff's warrants and which money and proceeds when collected by the terms of the contract must be exclusively used by the treasurer for the payment of said warrants as they matured and for no other purpose.

The case here fits perfectly the statute law of the State as it was at the time the plaintiff's warrants were issued, the plaintiff having a special claim payable out of the specific fund appropriated by the contracts made in 1905-6-7 and set apart for a specific purpose and these laws thus interpreted by the Supreme Court of Alabama were the remedies in existence at the time plaintiff's warrants were issued.

The Alabama Supreme Court has attempted in this case to make a distinction between a levy made *in fact* and a levy made *"in law"* and endeavors to sustain its position by the following reasonings:

1. "That when a *void tax* is levied as was done in this case that the tax levy made *in fact* has the same power as if were made *in law* and made with the authority of law; that such taxes under such levies, however, illegal, and void they may be in law that if they are made in fact contrary to the rights of the plaintiff they shall nevertheless "be applied exclusively to the purposes for which the tax was levied and collected;"

2. "That a void levy controls the county treasurer; that he has no right to disturb a void levy otherwise he would have the RIGHT TO "REVISE THE ACTION OF THE BOARD OF REVENUE AND THE TAX COLLECTOR AND SURELY NO COURT WILL COMPEL HIM BY MANDAMUS TO DO THAT WHICH HE HAS NEITHER THE POWER NOR THE RIGHT TO DO." It therefore clearly appears that no relief of *any kind* can be had against the county treasurer under the *facts* alleged in this petition

tion as *originally* filed or *subsequently* filed whether sought by mandamus or summary action."

(72 So. Rep. 552. This case.)

3. "Neither remedy is availing under the facts as here alleged unless the county treasurer, as such, has funds in his hands liable to the payment of the demand and which he ought as treasurer to pay thereon. Mandamus will not lie unless he has funds actually in hand which he ought to apply as payment."

(72 So. Rep. 551. This case.)

4. "It is unnecessary to decide whether the application for mandamus and the summary motion may be united, etc., or whether the *insolvency* of the treasurer and all his bondsmen would give the right to mandamus when such right would not otherwise exist.

5. "Because the case can and should be disposed of on another ground which goes as this record shows to the *rights of the parties* whether the remedy be one or the other of the above mentioned."

Farson, Son & Co. vs. Bird, 72 So. Rep. 551. (This case.)

6. "The *rights of the parties* therefore are ascertained by holding that inasmuch as the 1915 tax levy was made for roads and bridges it was *binding* on the treasurer; *binding* on the Board of Revenue. That it was a valid act and levy because it was in fact entered upon the minutes of the Board of Revenue and *actually written down.!*

"That mandamus should issue against the Board of Revenue to compel the levy of a tax for the plaintiff," and to give him the relief sought.

9.

Let all this be *answered* by saying that all a mandamus, to compel a tax levy, can do is to put money in the proper fund. After this is done all power over the fund by the Board of Revenue has been exhausted. They cannot control the treasurer or the fund.

1st. In this case the treasury is full of money; the particular fund is full of money derived from the levy of this special tax, the proceeds of which, must by law, be exclusively used for the payment of the plaintiff's warrants and for no other purpose.

2nd. All the plaintiff wants or needs in this case is a remedy to reach the money levied and collected and in the fund; to compel the treasurer to pay over the money in the fund to the plaintiff.

3rd. Inasmuch as this *particular levy of* 1915 was by a later decision of the Supreme Court of Alabama held to be null and void, under Section 215 of the Alabama Constitution, it follows of course:—That said levy being *void* as against the plaintiff's rights there was nothing for the treasurer to *revise*, on the part of the Board of Revenue and the tax collector. The levy was not binding on the treasurer, it was a nullity. He could only use the money to pay the plaintiff's warrants.

4th. There can be no such thing as a tax levy,—null and void in law and at the same time valid and effective in fact. This money was not appropriated to roads and bridges; the attempt to do so was void.

5th. "Where there is a legal right and no other (adequate) remedy by which the right can be enforced *mandamus* is the proper remedy."

72 So. Rep., 617. (See Appendix p. 65.)

6th. "Said special tax was (duly mortgaged) or *pledged* by said contract and a prior *lien* was given on the same and its proceeds," and the same was levied and appropriated for plaintiff's warrants in the year 1907.

72 So. Reps., 614, 616, 615. (See Appendix page 55-59.)

7th. Therefore the levy being *void* for roads and bridges it became valid for the plaintiff's court-house debt under the levies, appropriations and pledges previously made; the plaintiff had a legal right to the tax, and the proceeds of the tax as it arose, and had the legal right to control the disbursement of this money by the writ of mandamus, there being no other legal remedy in Alabama for this purpose, except the motion for summary judgment against the Treasurer under Section 5938 of the Code of 1907, and

The record conclusively shows that the remedy under the motion would be wholly abortive and entirely inadequate for the reason that the treasurer and the sureties upon his official bond were wholly *insolvent*.

We repeat, therefore, that the allegation in this petition; "That the county treasurer has breached his official duty in failing and refusing to pay the petitioners their warrants out of funds which were collected out of said special tax levied in 1915," etc.—is not a *pure conclusion* of the pleader, as stated by the Alabama Supreme Court, but is the statement of the truth irrefutably supported by the facts in this case, and the law.

(Record p. 132.)

PART X.

A COUNTY MAY PLEDGE THE SPECIAL TAX GRANTED TO IT BY SECTION 215 OF THE ALABAMA CONSTITUTION BY CONTRACT AND WHEN SO PLEDGED THE PROCEEDS OF SAID TAX MUST BE EXCLUSIVELY USED FOR THE PURPOSE FOR WHICH THE TAX WAS PLEDGED.

(See page 58 of this brief, latest Alabama decision) and

SHELBY COUNTY, ALABAMA HAS THE POWER TO LIMIT ITS TAXING POWER BY CONTRACT IN THIS CASE AND TO DISABLE ITSELF BY CONTRACT FROM EXERCISING ITS TAXING POWER IN THIS PARTICULAR CASE.

Let us examine the other demurrers of the defendant that set up the right of Shelby County to use its *discretion* as to what debts it shall pay with the proceeds of said tax, that raises the question whether the levy of said special tax of 25 cents on the $100.00 in the year 1915 for county roads and bridges *was a valid levy.*

Shelby County by the original levy of this tax made in the years 1905, 1906, and 1907 *selected* the debt they intended to pay from the levy of this tax; Alabama counties have the power to *disable* themselves and their power of taxation *by contracting* with reference to this special tax authorized by Section 215 of the Constitution. If said counties could not disable the power over the levy of this special tax there might be some question in this case, but they have power by contract to pledge and devote this special tax exclusively for court house debts and when so devoted and pledged, said tax cannot be used *for any other purpose*:—

1.

"It is well settled that a state may *disable* itself by contract from exercising its taxing power in particular cases. It is equally clear that where a state has authorized a municipal corporation to contract and to exercise the power of local taxation to the extent necessary to meet its engagements the power thus given cannot be *withdrawn* until the contract is satisfied."

Hoffman vs. City of Quincy, 4 Wall. 535;
18 Law Edition, 403;

Board of Revenue of Shelby County vs. Farson, Son & Co., 72 So. Rep. 615.

2.

In the case recently decided by the Alabama Supreme Court, the Court said (see Littlejohn v. Littlejohn, 72 So. Rep. 448-50): (195 Ala. 604.)

> "The power to incur a debt or liability for the public purposes named in Section 215 is expressly recognized therein; and the authority to levy the special taxes described in that section is conferred to the prescribed AND EXCLUSIVE END OF DISCHARGING THE DEBT OR LIABILITY SO INCURRED. The terms "debt" and "liability" as there employed comprehend the engagement for the payment of interest as an incident to the municipal obligation validly assumed by the county in order to provide public buildings, public roads and public bridges."
>
> "* * * It does contemplate the incurring of obligations for those purposes to be satisfied and discharged in the future and intend THE GATHERING OF THE MEANS TO THAT END AND THROUGH THE IMPOSITION OF THE SPECIAL TAXES DESCRIBED IN SECTION 215. Being thus authorized and empowered to provide those public necessities by an assurance of the subsequent payment therefor IT CANNOT BE DOUBTED THAT THE MAKERS OF THE CONSTITUTION CONTEMPLATED AND INTENDED THAT THE MEANS THUS SPECIALLY AFFORDED TO SUBSEQUENTLY DISCHARGE THE

DEBT OR LIABILITY *COULD BE VALIDLY DEVOTED* TO THE PAYMENT OF INTEREST THEREON AS A PART OF THE OBLIGATION ASSUMED BY THE COUNTY IN PROVIDING THE PUBLIC NECESSITIES DESCRIBED."

"The Commissioners Court of Chilton County possessed and possesses the power and authority to determine what public road or roads should be constructed or maintained in the county; and likewise the power and authority TO SELECT AND TO DECIDE AS WAS DONE IN THIS INSTANCE AS TO WHAT PUBLIC ROAD IMPROVEMENT THE PROCEEDS *OF THE SPECIAL TAX SHOULD BE DEVOTED*. The special tax was levied to afford the special fund against which the warrants in question are drawn and was designed to discharge a "debt or liability" validly incurred for a purpose within the provision of Section 215 of the Constitution."

In the Tally case Chief Justice McLellan said: (page 649) "We need not pass upon the question AS TO THE COMPETENCY OF THE COMMISSIONERS COURT WHEN WARRANTS ARE ISSUED, PAYABLE YEARLY, FOR A NUMBER OF YEARS IN THE FUTURE, TO LEVY IN THE *OUTSET* A SPECIAL TAX FOR EACH OF SAID YEARS TO RAISE MONEY TO MEET THE WARRANTS MATURING EACH YEAR. IT MAY BE THAT THE SPECIAL LEVY SHOULD BE MADE FROM YEAR TO YEAR: BUT THAT CONCESSION WOULD NOT GIVE EQUITY TO THIS BILL. IF THE LEVY BEYOND THE

CURRENT YEAR IS INVALID THE FACT WOULD AFFORD NO GROUND FOR DECREEING THE INVALIDITY OF THE CONTRACT FOR THE ERECTION OF THE COURT HOUSE AND ENJOINING ITS EXECUTION; NOR WOULD A DECREE ANNULLING THE LEVY AS TO THE *LATER YEARS* INTERFERE WITH THE CARRYING OUT OF THE CONTRACT, OR AVAIL COMPLAINANTS IN *ANY WAY SINCE THE COMMISSIONERS COURT WOULD HAVE THE POWER AND INDEED WOULD BE UNDER THE DUTY TO MAKE THE NECESSARY LEVY YEAR BY YEAR.*"

Tally vs. Commissioners Court, Jackson County, 175 Ala., 649;

The special county tax under subdivision (a), Section 215 of the Alabama Constitution, and the Statutes putting it into operation, are construed by the Supreme Court of Alabama; the tax and its proceeds may be *pledged by contract* to pay courthouse debts and when so pledged said tax and its proceeds must be exclusively used for the courthouse debt and for no other purpose.

(See Appendix pages 58 and 59.)

PART XI.

ALL SUBSEQUENT LEGISLATION BY SAID COUNTY IS VOID. THE ROAD AND BRIDGE TAX LEVY OF 1915 WAS NULL AND VOID, AS TO PLAINTIFF'S RIGHTS.

The tax levy of 1915 was null and void so far as the plaintiff's rights are concerned. This being true the money derived from the tax levy and placed in the fund must be treated by the courts in this case just as if the illegal tax levy of 1915 had not been made.

1.

"Where the resource for payment of the bonds of the municipal corporation is the power of taxation existing when the bonds were issued any law (or resolution of the Board of Revenue made in 1915) which *withdraws* or limits the taxing power and leaves no adequate means for the payment of the bonds is forbidden by the Constitution of the United States *AND IS NULL AND VOID.*"

City of Ensley v. Simpson, 166 Ala. 387, 388.

2.

Port of Mobile v. Watson, 116 U. S., 289, 306, 29 Law Ed. 620.

At page 626 (Law ed.) the Court said:

"Therefore the remedies for the enforcement of such obligations assumed by a municipal corporation which existed at the time the contract was made must be left unimpaired by the Legislature, or if they are changed a substantial equivalent must be provided. Where the recourse for the payment of the bonds of a municipal corporation is the power of taxation existing when the bonds were issued, any law which withdraws or limits the taxing power and leaves no adequate means for the payment of the bonds is forbidden by the Constitution of the United States and is *null and void.*

Von Hoffman v. Quincy, 71 U. S., 18 Law ed. 403;

Edwards v. Kearsey, 96 U. S., 24 Law ed. 793.

Rawls County Court vs. United States and Louisiana v. Pillsberry, 105 U. S., 733, 26 Law ed. 1090;

Louisiana v. Mayor of New Orleans, 109 U. S., 285, 28 Law ed. 936.

These propositions receive strong support from the decisions of the Supreme Court of Alabama.—Comrs. of Limestone County v. Rather, 48 Ala. 433; Edwards v. Williamson, 70 Ala. 145; Slaughter v. Mobile County, 75 Ala. 134."

3.

"Any law which causes a deviation from the terms of the contract by *postponing* or accelerating the period of *performance* which it prescribes, imposing conditions not expressed or dispensing with the performance of those that are expressed, however, apparently immaterial in their effect upon the contract impairs its obligation."

Green vs. Biddle, 8 Wheedon 1 (U. S. S. Ct. Reports) 5 Law. Ed. 547.

4.

"Whatever lessons the efficacy of the means which at the time of the creation of a contract, the law provides for its enforcement, as by postponing or retarding such enforcement impairs the obligation."

Louisiana ex rel. Ranger vs. New Orleans, 102, U. S., 203.

26 Law Ed. 132.

5.

"That the ordinance of the common council of a municipal corporation may constitute a law within the meaning of this constitutional clause (United States Constitution; Section 10, Article 1) is too well settled to admit of doubt. Citing authorities.

Mercantile Trust Company vs. Columbus, 203 U. S., 311.
31 Law Ed. 202.

6.

"So a by-law or ordinance of a municipal corporation may be such exercise of legislative power delegated by the Legislature to the corporation as a political sub-division of the State having all the force of law within the limits of the municipality that it may be properly considered as a law within the meaning of this article of the Constitution of the United States."

For instance the power of determining what persons and property *shall be taxed* belongs exclusively to the legislative branch of the government and whether exercised by the Legislature or the municipal corporation is strictly a legislative power, etc. Accordingly, where city of Charleston passed ordinances assessing a tax upon the bonds of the city, diminishing the amount of interest agreed to be paid this Court held such ordinances to be laws impairing the obligation of contracts."

New Orleans Water Works Company vs. La. Sugar Refining Co., 125 U. S., page 18-39; 31 Law Ed., page 612.

7.

Louisiana v. Pillsberry, Mayor of New Orleans, 105 U. S. (15 Otto), 278, 302, 26 L. ed. 1090.

At page 1098 (Law ed.) the Court said:

"Legislation of a state thus impairing the obligation of contracts made under its authority is *null and void* and the *Courts in enforcing the contracts* will pursue the same course and apply the same remedy as though such

invalid legislation had never existed."

We have shown that the tax levy of 1915 is null and void and could have no control or power over the county treasurer or the money in his hands derived from said levy, being void against the rights of the plaintiff; the right to have the proceeds of this tax applied by the county treasurer exclusively to the payment of plaintiff's warrants and for no other purpose; these rights could not be destroyed by the treasurer; after the money reached his hands it was controlled BY THE VALID APPROPRIATIONS AND ORDERS, MADE IN 1905, 1906 and 1907, which were the contracts authorizing the issuance of the plaintiff's warrants and these contracts *controlled* the treasurer.

This being true the tax levy of 1905-6 and 7 and the appropriations of the proceeds derived from the tax for the future payment of the plaintiff's warrants controlled this fund and controlled the treasury in this case.

It follows, without question that the treasurer was bound in law to pay the plaintiff's warrants in the order of their registration out of this special fund, he having sufficient money in the fund for that purpose. The county having by *valid* contract *waived* all defenses to this suit, interposed by said treasurer or any other county official. (Rec. 19-88-103.)

IN CONCLUSION.

All of the foregoing contentions of the plaintiff in this case have been fully sustained in our judgment by the Supreme Court of Alabama in a later decision and a branch suit between the same parties in this case in a suit brought in another action on another batch of these same warrants.

Board of Revenue of Shelby County vs. Farson, Son & Co., 72 So. Rep., page 613. (A copy of

this case is set out in full in the appendix to this brief.) (Appendix p. 53.)

Let us examine, therefore, the case referred to and a list of the points actually decided by the Alabama Supreme Court. They are as follows:

1. "That plaintiff's warrants are valid:
Tally vs. Jackson County, 175 Ala., 644.
Littlejohn vs. Littlejohn, 71 So. Rep., 448.
Board of Revenue of Shelby County vs. Farson, Son & Company, 72 So. Rep., 614. (Appendix p. 56.)

2. "Shelby County had full power under Sec. 213 of Alabama Constitution and Statutes to make these contracts, to issue said warrants; and the resolutions and ordinances comprising said contracts pledging the special county tax and its proceeds exclusively for plaintiff's warrants, are binding upon Shelby County.

72 So. Rep. 615. (Appendix p. 58-59-62-63.)

3. "The special provisions of said contracts referred to in this brief on page 12 to 14 are valid. (Appendix p. 55-59.)

4. "Said court holds that the local acts of Shelby County of 1911 page 134 are not involved in this case. (Rec. p. 120.)

72 So. Rep. 615. (Appendix p. 57.)

5. "That said special tax was ordered levied annually to pay for the annual installments of plaintiff's warrants."

72 So. Rep. 615. (Appendix p. 55.)

6. "The court approves its former rulings, —that this special tax may be levied at the outset for all of the future years of the annual installments of the court house debt, as

was done in the Tally case supra and in the case of the Board of Revenue of Covington County vs. Merrill, 193 Ala. 530.

"Or the county may levy all the tax before the debt is made from year to year to accumulate in advance a building fund.

Cherokee County, 144 Ala., 579.

72 So. Rep., 614. (Appendix p. 57-58.)

7. "That the surplus of this special tax arising in any one year may be used for any other lawful purpose."

72 So. Rep., 616. (Appendix p. 64.)

8. "That said tax levy made in 1915 for county roads and bridges was null and void contrary to and forbidden by the Constitution of the United States, being subsequent legislation impairing the obligations of plaintiff's contracts and taking away the power and means to enforce the same."

72 So. Rep., 615. (Appendix p. 59 to 64.)

9. "The record here discloses that the warrants, the subject matter of this litigation were *duly registered* as claims against this special *fund* and were *prior* claims thereon. Section 211, Code of 1907."

72 So. Rep., p. 615. (Appendix p. 57-64.)

10. "The fact, that after the issuance of these court house warrants and the same had been registered as *prior* claims on this *fund*, the Board of Revenue in disregard of the previous agreement made by the Court of county commissioners, issued other warrants for road and bridge purposes, payable to other parties,—could have *no effect* upon the rights of these petitioners who held the *prior* claim to the *fund*." (Appendix p. 64.)

11. "Subsequent contractors must have

had knowledge of the *priority* of the petitioner's claim and considerations of this character can have no bearing upon their right."

72 So. Rep., 616. (Appendix p. 64.)

12. "Section 2207-2208 requires the treasurer to keep such special taxes in a distinct *fund* separate from all other public funds."

72 So. Rep., 614. (Appendix p. 57.)

13. "In short the effect of their action (levying the 1915 special tax for roads and bridges) is to repudiate the agreement of the Court of county commissioners, that this special tax *fund* should be *exclusively devoted* to the payment of the court house debt for which it was pledged and to divert the *fund* from that purpose to an entirely different one,—Contrary to the Constitution of the United States," and the State of Alabama.

So Rep. 72, page 615. (Appendix p. 58-59.)

14. "We are fully persuaded therefore that the action of the Board of Revenue in *diverting* this special tax from the purposes for which it was *pledged* to other purposes is *ineffective* insofar as it affects the rights of these petitioners as it is practically a *repudiation* of a *valid* agreement and an *attempted destruction* of the remedy for the enforcement of the payment of these obligations existing at the time the same were contracted."

72 So .Rep., 616. (Appendix p. 63.)

15. "The contract being *binding* the question passed beyond the field of *discretion* and became one of *plain duty to carry out their agreement solemnly made.* While it is true the language of the Constitution, as well as of the statute says that the Commissioners Court

> *may* levy the tax, yet having bound themselves by *valid* agreement to levy the tax,—the clear legal duty arises to conform to that agreement, AND MANDAMUS IS THE PROPER REMEDY."
>
> 72 So. Rep., 616.

What the plaintiff in this case desires is to get the benefits of the rights granted them in the foregoing case enforced, to get a remedy to compel the county treasurer of Shelby County to pay the plaintiff's warrants out of this special fund without regard as to how, when and for what purpose said county attempted to levy or divert this special tax fund for other purposes.

It is useless to file a mandamus suit against the Board of Revenue year by year to compel them to levy this tax annually to pay the court house debt. If there is no remedy or means of getting this money *out of the county treasurer* it is useless to mandamus the board to compel it to fill up the fund with money by taxation; *the fund is now full of money;* what the plaintiff wants is a speedy method of getting his money *out* of the fund.

We are told by the county and its treasurer that we should keep a man on guard to prevent the county from misappropriating this tax, from levying it, and diverting it to other purposes year by year.

We reply, Section 1, Article 10 of the Constitution of the United States, is our sentinel, always at his post. We rely upon this clause of the law to protect our rights at all times and when Shelby County is told by this Court that it will be useless for it to levy this tax for any other purpose for the reason that it will be obliged and the treasurer will be obliged under the law to use it solely for the payment of plaintiff's warrants,—when this is done, we feel certain that the plaintiff will have no difficulty hereafter in collecting his money; otherwise the Constitution of

the United States is worthless to the plaintiff; and of no protection whatever, for all the county has to do to defeat the plaintiff and his rights and deprive him of his money is simply to do what the Supreme Court of Alabama says in this case can be done, namely:—

> For the Board of Revenue of Shelby County to make a levy in any year *in fact* for county roads and bridges; this being done the levy money passes beyond the control of the treasurer; he is bound by such levy and must use the proceeds of the levy for roads and bridges and can not be forced to pay the plaintiff's warrants; this position should not and can not be sustained.

PRAYER.

We therefore pray,—that this Court will give judgment for the plaintiff; will award the writ of mandamus; will reverse the judgment of the court below; will render a judgment here declaring that the plaintiff is entitled to *said* money in the county treasury in said special fund, in the hands of said county treasurer, Bird, of Shelby County at the time this suit was brought and will make an order declaring said money must be used exclusively for the plaintiff's warrants and for no other purpose, and requiring said treasurer to pay said warrants, with interest thereon to date and for costs; that this Court will enforce plaintiff's contracts, will apply the same remedy and compel the county treasurer to pursue the same course as though such invalid tax levy legislation made in 1915 had never existed.

That all other questions and matters prayed for in said petition be expressly left undecided without prejudice and an order given accordinily to the court below.

G. W. L. SMITH,
Attorney for the Plaintiff in Error.

1. *Note*: "The plaintiff has about $2,000,000.00 invested in these Alabama warrants and the value of them depends on this suit."

2. *Note*: It has been agreed to by the parties that all of the real merits of this case shall be directly passed upon by the Court.

G. W. L. SMITH,
Attorney for Plaintiff.

CERTIFICATE.

I hereby certify that I have served ——— copies of this brief on the attorneys for the defendant in error, Messrs. Rushton, Crenshaw & Williams, Attorneys, of Montgomery, Alabama, and Messrs. Haynes & Wallace of Columbiana, Alabama, and also on the defendant, Hon. Joe S. Bird, on this the .....day of ....., 1917.

I further certify that I have deposited the required number of copies of this brief with the Clerk of the Supreme Court of the United States.

G. W. L. SMITH,
Attorney for the Plaintiff in Error.

APPENDIX.

BOARD OF REVENUE OF SHELBY COUNTY

v.

FARSON, SON & CO.

(7 Div. 822.)

(Supreme Court of Alabama. July 6, 1916.)

1. Courts,—key 93(1)—Stare Decisis.

Decisions long acquiesced in and acted upon and specifically relied on in the instant case become a rule of property and settled law.

[Ed. Note.—For other cases, see Courts, Cent. Dig. § 336; Dec. Dig. key 93(1).]

2. Counties,—key 113(3), 164—Contracts—Powers of Board.

Code 1907, § 133, empowers county commissioners to erect courthouses and to levy a special tax therefor. Section 131 provides that county buildings are to be erected at the expense of the county under the direction of the county commissioners who are authorized to make all necessary contracts for that purpose. Section 138 specifically authorizes a special tax for payment of debts in constructing county buildings to be applied exclusively for the purpose for which levied. Section 2206 requires that when the tax collector collects any special taxes he shall specify in the receipt the purposes for which levied and collected. Section 2207 requires that special taxes be paid over by the collector to the treasurer and be kept as a distinct fund. Section 2208 requires the treasurer to keep such special taxes sepa-

rate from all other public funds and to keep a separate account thereof. Section 211, subd. 4, makes it the duty of the county treasurer to register claims allowed against a fund raised for a special purpose, and to pay them in the order of the registry. Const. 1901, § 215, authorizes counties, when further authorized by statute, to levy a tax not exceeding one-fourth of one per cent. per annum to pay debts against the county. *Held*, that a resolution of the county commissioners to build a hourthouse and issue warrants to be redeemed by a special tax was within the power of commissioners, and constituted a valid contract to pay in the manner provided, and that such sections became a part of the contract.

[Ed. Note.—For other cases, see Counties, Cent. Dig. §§ 174, 177, 241-245; Dec. Dig. key 113(3), 164.]

3. Counties key 113(3—Funds—Special Tax—Diversion—Powers of Board.

Under such statutes, and Loc. Acts 1911, p. 154, abolishing the court of county commissioners of Shelby county and establishing in their stead a board of revenue, and Code 1907, § 3321, providing that all general laws in reference to several courts of county commissioners shall apply to all similar courts of whatever name with like jurisdiction, such agreement was binding on the new board of revenue, and it could not divert the special tax fund to road building.

[Ed. Note.—For other cases, see Counties, Cent. Dig. §§ 174-176; Dec. Dig. key 113(2).]

4. Mandamus key 114—Discretionary Orders—Levy of Tax.

[d. Note.—For other cases, see Mandamus, Cent. Dig. §§ 241, 244-246, 248; Dec. Dig. key 114.)

5. Counties key 195—Funds—Special Tax—Diversion.

Under Code 1907, § 138, authorizing county commissioners to levy a special tax not exceeding one-fourth

of one per cent. per annum for payment of certain debts, to be applied only to the purpose for which levied, the commissioners may employ any excess of the proceeds of such tax over the needs of the special purpose to other legitimate purposes of the county.

[Ed. Note.—For other cases, see Counties, Cent. Dig. § 307; Dec. Dig. key 195.]

Appeal from Shelby County Court; E. S. Lyman, Judge.

Mandamus by Farson, Son & Co. against the Board of Revenue of Shelby County. From a judgment granting the writ, the Board appeals. Affirmed.

Application by the appellees for mandamus to compel the board of revenue of Shelby county to levy a special county tax of one-fourth of 1 per cent., or a sufficient amount of said tax, to raise money for payment of certain warrants past due in 1916, and to provide for the payment of said warrants falling due in 1917. From the judgment of the court granting such relief respondents prosecute this appeal.

A branch of this identical litigation is found in the case of Farson, etc., v. Joe S. Bird, as Treasurer, 72 South. 550. The salient features of the case are thus set out in the opinion:

> "That said board of revenue, as now constituted, has ignored or repudiated said road debt, and declines to levy any tax to pay for the courthouse debt, and has levied in the year 1915 all of said tax of one-fourth of one per centum (¼ of 1%) to pay for the expenses usual and ordinary and incidental to the construction and upkeep of county bridges generally throughout the county and for future bridge debts anticipated at the time the levy was made, which levy is shown in Exhibit D hereto annexed and made a part of this peti-

tion; that on account of the orders of the board and the levy of said tax therein made and set out in Exhibit D said J. S. Bird, county treasurer, has refused, and still refuses, to pay the warrants of your petitioner, or any one of the said courthouse warrants registered aforesaid and maturing February 1, 1916, but said treasurer has paid on said county road warrants contracted for by A. T. Newell & Bros. since 1911, and registered since 1911 and held by said assignee of said warrants ,the sum of $7,050 on January 20, 1916; your petitioners fear that all of said $12,000 will be paid out by said treasurer to other persons not entitled to the same, unless the writ prayed for herein is granted; that in the opinion and according to the advice given your petitioners, said $7,000 was wrongfully paid out by said treasurer."

"That said Bird as treasurer has failed to apply the money and proceeds derived from taxation—from the levy of said county tax of one-fourth of one per centum (¼ of 1%)—during the year 1915, to petitioners' warrants amounting to $1,565, due February 1, 1916, after demand made upon him after February 1, 1916, to apply said money and pay said proceeds over to your petitioners."

The contracts entered into for the erection and equipment of the courthouse by the court of county commissioners of Shelby county, and which were spread upon the minutes of said court, are made exhibits to the petition. The orders of the court disclose that it was agreed that for the purpose of paying the indebtedness for the erection and equipment of the said courthouse, there should be issued interest-bearing warrants, payable at stated times through a series of years, and that

to secure their payment there was ordered levied the special tax of one-fourth of 1 per cent., as authorized by section 215 of our Constitution. It was agreed that such levy be made *for each of the years,* and from year to year, until the indebtedness had been paid. It further appears that it was agreed and *so ordered* that no part of such special tax fund should be used for any other purpose until a sufficient amount had first been levied, collected, and appropriated each year to pay the installments falling due by virtue of said contract. The said special tax revenues, when collected, should be applied *exclusively* to the annual payments as the same fell due. It was further resolved by the said commissioners that the tax levy and the resolutions ordering the same should constitute a *continuing contract* between the county and the contractors and their assigns, and that said *levy* should not be in any way limited or *repealed* so long as any of the said warrants or certificates of indebtedness and the interest thereon shall remain outstanding and unpaid. It was further provided that the contractor should have the right to *assign* and transfer to any person all rights, privileges, claims, or demands against the said county accruing by virtue of said contract, and the right to *subrogate* such transferee to all rights, demands, liens, and privileges belonging to him under the contract.

Haynes & Wallace and Saxon & Acuff, all of Columbiana, and Rushton, Williams & Crenshaw, of Montgomery ,for appellant. G. W. L. Smith, of Brewton, for appellee.

GARDNER, J. [1] In the case of Talley v. Coms. Ct. Jackson County, 175 Ala. 644, 39 South. 167, is was said:

"It was decided in the case of Matkin v.

> Marengo County, 137 Ala. 155, 34 South. 171, that the issuance by the authority of the commissioners' court of interest-bearing warrants on the county treasurer, payable at a stated time in the future—ten years in that case—for the amount of a debt contracted for the building of a courthouse, was not the issuance of bonds by the county within the provisions of section 222 of the Constitution, and was within the competency of the court of county commissioners. We adhere to and reaffirm that ruling."

In the recent case of Littlejohn v. Littlejohn, 71 South. 448, we again had occasion to consider a question of similar character, involving the issuance of interest-bearing warrants presentable and payable at a future specified date. We there stated that the question as to the regularity and validity of the issuance of such warrants, payable at stated times in the future, to pay for public buildings, roads, and bridges, was settled many years ago in the case of Talley v. Jackson County supra, and its predecessor, Matkin v. Marengo County, 137 Ala. 155, 34 South. 171.

There have doubtless been many investments in securities of this character rested upon these decisions. Indeed, the record in the instant case discloses that the contracts and the orders of the commissioners' court of Shelby county makes special reference to the Talley Case. The ruling of that case must therefore be held to have become, so to speak, a rule of property, and to be now accepted as the settled law of this state.

[2] The contracts and warrants here involved find striking analogy to those in the case above cited, and come directly within the influence of these authorities. See, also, in this connection Bd. Rev. Covington County v. Merrill, 68 South. 971; Weeks v. Bymum, 158

Ala. 233, 48 South. 489; South. Ry. v. Cherokee County, 144 Ala. 579, 42 South. 66.

Under the provisions of section 133 of the Code the court of county commissioners is empowered to erect courthouses and to levy a special tax for that purpose. Section 131 provides that the county buildings are to be erected and kept in order and repair at the expense of the county under the direction of said court, which is authorized to make all necessary contracts for that purpose. This is not only the right of such court, but also its duty. Long v. Shepherd, 159 Ala. 595, 48 South. 675. Section 138 gives the specific authority to levy and collect a special tax, not to exceed in any one year one-fourth of 1 per cent., for the payment of debts incurred in the erection, construction, or maintenance of public buildings, bridges, or roads, and provides that when such tax is collected, it shall be applied exclusively for the purposes for which it was levied. To like effect is section 134. Section 2206 requires that when the tax collector collects any special taxes, he shall specify in the receipt given therefor the purposes for which it was levied and collected, and the succeeding section requires that such taxes be paid over by the collector to the county treasurer and be kept as a distinct fund. Section 2208 requires the treasurer to keep such special taxes separate from all other public funds and to keep a separate account thereof. The record here discloses that the warrants, the *subject-matter* of this litigation, were *duly registered* as claims against this special *fund* and were *prior* claims thereon. Section 211, Code 1907. The board of revenue of Shelby county succeeded the court of county commissioners. This board were given the same authority and assumed the same liabilities, and were governed by the same rules of law, so far as the question here involved is concerned, as the court of county commissioners. Local Acts 1911, p. 154; Code 1907, § 3321. Under the provisions

of *Section 215 of our Constitution* and the Code provisions above referred to, the court of commissioners for the county of Shelby were *authorized* to levy the special tax of one-fourth of 1 per cent., *to be used exclusively in the payment of the courthouse indebtedness.* They had full power to enter into the contract and to agree to levy said special tax. This was so recognized in the Talley Case, supra, wherein the court said:

> "We need not pass upon the question as to the competency of the commissioners' court, when warrants are issued payable yearly for a number of years in the future, to levy in the outset a special tax for each of such years to raise money to meet the warrants maturing each year. It may be that the special levy should be made from year to year; but that concession would not give equity to this bill. If the levy beyond the current year is invalid, the fact would afford no ground for decreeing the invalidity of the contract for the erection of the courthouse and enjoining its execution; nor would a decree, annulling the levy as to the later years, interfere with the carrying out of the contract, or avail complainants in any way, since the commissioners' court would have the power, and, indeed, be under the duty, to make the necessary special levy year by year."

The agreement entered into, therefore, was *valid* and binding upon the county. The *law in force* at the time of this contract became a part of the contract. It clearly appears that the parties to the contract looked to the special county tax ordered to be levied, collected, and set apart for the payment thereof, and, indeed, that this special tax was *pledged* for that purpose.

We have concluded that under our decisions the commissioners' court were *authorized* to make this contract. The remedy for its enforcement, by means of the special tax to be levied and collected each year, was a most material part of the contract and doubtless a controlling inducement to the contractor.

[3] After a number of years there was a change in the governing body of the county, from a court of commissioners to the present board of revenue, and consequently a change in the personnel of the officers. The board of revenue, it seems, concluded to levy this special tax for other and different purposes than those for which it was formerly pledged, and have contracted, or propose to contract, a large indebtedness for the building of new bridges and the improvement of public roads, to be paid for out of this special tax, and have issued interest-bearing warrants for such purpose. In short, the effect of their action is to *repudiate* the agreement of the court of county commissioners that this *special tax fund* should be *exclusively devoted* to the payment of the courthouse debt for which it was *pledged,* and to *divert* the *fund* from that purpose to an entirely different one. It is insisted that this cannot be done, upon the theory that it would take away the power to enforce the contract, and therefore, by *subsequent legislation,* as it were, *impair* the obligation of the contract, contrary to the provisions of the federal and state Constitutions. We are of the opinion that this insistence is well supported by the authorities. In the case of Port of Mobile v. Watson, 116 U. S. 289, 6 Sup. Ct. 398, 29 L. Ed. 620, is the following language:

> "Therefore the remedies for the enforcement of such obligations assumed by a municipal corporation, which existed when the contract was made, must be left unimpaired by the Legislature, or, if they are changed, a sub-

stantial equivalent must be provided. Where the resource for the payment of the bonds of a municipal corporation is the power of taxation existing when the bonds were issued, any law which withdraws or limits the taxing power and leaves no adequate means for the payment of the bonds is forbidden by the Constitution of the United States, and is null and void."

The case of Von Hoffman v. City of Quincy, 4 Wall. 535, 18 L. Ed. 403, is referred to as the leading case upon this question among the federal authorities. The following from the opinion is of interest in this connection:

"When the bonds in question were issued, there were laws in force which authorized and required the collection of taxes sufficient in amount to meet the interest, as it accrued from time to time, upon the entire debt. But for the act of the 14th of February, 1863, there would be no difficulty in enforcing them. The amount permitted to be collected by that act will be insufficient; and it is not certain that anything will be yielded applicable to that object. To the extent of the deficiency the obligation of the contract will be impaired, and if there be nothing applicable, it may be regarded as annulled. A right without a remedy is as if it were not. For every beneficial purpose it may be said not to exist. It is well settled that a state may disable itself by contract from exercising its taxing power in particular cases. It is equally clear that where a state has authorized a municipal corporation to contract and to exercise the power of local taxation to

> the extent necessary to meet its engagements, the power thus given cannot be withdrawn until the contract is satisfied. The state and the corporation, in such cases, are equally bound. The power given becomes a trust which the donor cannot annul, and which the donee is bound to execute; and neither the state nor the corporation can any more impair the obligation of the contract in this way than in any other."

The principles above announced have found frequent reiteration in the following, among other, cases: Wolff v. New Orleans, 103 U. S. 358, 26 L. Ed. 395; U. S. v. New Orleans, 98 U. S. 381, 25 L. Ed. 225; Louisiana v. New Orleans, 102 U. S. 203, 26 L. Ed. 132; Louisiana v .Pilsbury, 105 U. S. 278, 26 L. Ed. 1090. The same principle was fully recognized by this court in Coms. Ct. v. Rather, 48 Ala. 433, where it was said:

> "It is now the fixed and well-settled law of this country, that the law in force at the time a contract is entered into becomes a part of it, both as to its stipulations and also as to the remedy, which may be resorted to, to carry the stipulations into effect. And neither the law governing the stipulations nor the remedy can be so altered after the execution of the contract as to impair any rights, whether of remedy or otherwise, which grew out of the contract on the day it was made. The obligation of a contract extends not only to the stipulations, which the parties have agreed upon, but to the rights belonging to the remedy on the day the contract bears date. The mode of enforcement, the practice, may be altered, but not so as to impair the rights of the parties un-

> der the contract, as they existed at the date of its execution. * * * Then, there is no such thing as a lapse of the remedy which entered into the contract, for its enforcement at its execution. This lives as long as the contract itself, save in such case as the law declares, that unless it is resorted to within a certain period, it shall not be available at all. In jurisprudence, it is mere sophistry to speak of an obligation without a remedy. The power to enforce the obligation is its legal virtue. When this is gone, there is nothing left upon which courts can act. New remedies may be added, and the former remedies may be left unimpaired, but where the right depends upon contract, the former remedies cannot be taken away, so as to affect injuriously the contract in its stipulations or in the duration or benefits of its remedies. White v. Hart, 13 Wall. 646 (20 L. Ed. 685.)"

[4] It is insisted that the question of levying the special tax and of the purpose for which the same shall be applied is a matter resting in the *discretion* of the board of revenue or commissioners' court, and cannot be controlled by the writ of mandamus. We are of the opinion, however, that as the commissioners' court had full power to enter into the contract and agree to levy this special tax for this particular purpose, and that as such agreement is valid and binding and a most material part of the contract, it became the legal duty of the court to levy the tax and have the money so collected appropriated to the purpose for which it was pledged. The *contract being binding, the question passed beyond the field of discretion and became one of plain duty to carry out the agreement solemnly made.* While it is true that the language of the Constitution,

as well as of the statute, says that the commissioners' court may levy the tax, yet, having bound themselves by valid agreement to levy the tax, the clear legal duty arises to conform to that agreement, and *mandamus* is the proper remedy. As was said in the case of Tarver v. Coms. Ct., 17 Ala. 531:

> "It is true the language of the act is that it shall be lawful for the commissioners' court to levy a tax, etc.; but it is well settled that the word 'may,' or the words, 'it may be lawful' are peremptory when used in a statute, where the public or an individual has a right de jure, that the powers conferred by the act should be exercised. Ex parte Simonton, 9 Port. 390 [33 Am. Dec. 320]; 1 Ver. 152; Neuburgh Turnpike Co. v. Miller, 5 John. Ch. 101, 113. The facts set forth in the petition, and which we are to consider *as true,* as they were demurred to, show that the petitioner has a legal right to require the commissioners court to levy and collect a tax sufficient to pay the amount due on the judgment, as well as such sum as the petitioner has paid, if any, on account of his individual liability as commissioner, incurred in the discharge of his duties as such. This is his legal right, and there is no other remedy by which it can be enforced; consequently a mandamus is the proper remedy."

To the same effect is the case of Graham v. Tuscumbia, 146 Ala. 449, 42 South. 400.

We are fully persuaded, therefore, that the *action* of the board of revenue in *diverting this special tax from the purposes* for which it was *pledged* to other purposes is *ineffective* in so far as it *affects* the *rights* of these petitioners as it is practically a *repudiation* of a

valid agreement, and an attempted *destruction* of the *remedy* for the *enforcement* of the payment of these obligations, *existing* at the time the same were contracted. The board of revenue is only required by the order from which this appeal is taken to levy for the year 1916 the special tax of one-fourth of 1 per cent., or so much thereof as may be sufficient to pay the principle and interest due in February, 1916, and to become due in February, 1917.

[5] We gather from the record that the special tax of one-fourth of 1 per cent. will yield a sum more than sufficient to pay the courthouse installments as they become due; and the *surplus*, if any, may, of course, be applied to the road or bridge indebtedness referred to herein. The fact that after the issuance of these courthouse warrants and the same had been registered as *prior claims* on this *fund* the board of revenue, in disregard of the previous agreement made by the court of county commissioners, issued other warrants for road and bridge purposes, payable to other parties, could have no effect upon the rights of these petitioners, who held the *prior claim* to the *fund*.

Subsequent contractors must have had knowledge of the *priority* of the petitioners' claim, and considerations of this character can have no bearing upon their rights.

We have not overlooked the cases, cited by appellants' counsel, of Westminster Water Co. v. Mayor, 98 Md. 551, 56 Atl. 990, 6 4L. R. A. 630, 103 Am. St. Rep. 433, and Gale v. Kalamazoo, 23 Mich. 344, 9 Am. Rep. 80, but we do not consider that they militate against the conclusion we have here reached.

The record before us discloses that no question was raised as to the validity of these warrants, nor as to the fact that the amounts evidenced thereby are justly due and unpaid. It clearly appears, also, that without recourse to this special tax the petitioners will be without remedy for the enforcement of these obligations. We

have held as against the county treasurer, under the facts set out in the case of Farson v. Bird, supra, that mandamus would not lie, and that a summary judgment could not be recovered.

We have concluded that petitioners have a clear legal right, and they are without other remedy by which this right can be enforced. As was said in Tarver v. Coms. Ct., supra, where there is a legal right and "no other remedy by which it can be enforced,* * * mandamus is the proper remedy."

The judgment of the court below will be affirmed.

Affirmed.

(See 72 So. Rep. page 615.)